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IN THE SUPERIOR COURT OF the STATE OF ARIZONA
 FOR THE COUNTY OF YAVAPAI

2011 DEC 29 AM 8:28

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BY *Stephanie Kling*

STATE OF ARIZONA,)

Plaintiff,)

vs.)

Case No. V1300CR201080049

JAMES ARTHUR RAY,)

Defendant.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
 BEFORE THE HONORABLE WARREN R. DARROW

TRIAL DAY TWENTY-NINE

APRIL 7, 2011

Camp Verde, Arizona

ORIGINAL

REPORTED BY
 MINA G. HUNT
 AZ CR NO. 50619
 CA CSR NO. 8335

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1 IN THE SUPERIOR COURT OF the STATE OF ARIZONA
2 FOR THE COUNTY OF YAVAPAI
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4 STATE OF ARIZONA,)
5 Plaintiff,)
6 vs) Case No V1300CR201080049
7 JAMES ARTHUR RAY,)
8 Defendant)
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1 Proceedings had before the Honorable

2 WARREN R. DARROW, Judge, taken on Thursday,
3 April 7, 2011, at Yavapai County Superior Court,
4 Division Pro Tem B, 2840 North Commonwealth Drive,
5 Camp Verde, Arizona, before Mina G. Hunt, Certified
6 Reporter within and for the State of Arizona.
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PROCEEDINGS

THE COURT: The record will show the presence of the defendant, Mr. Ray; the attorneys, the jury. The witness, Mr. Mercer, has returned to the witness stand. He's under oath, of course.

Mr. Li, you may cross-examine.

MR. LI: Thank you very much, Your Honor.

CROSS-EXAMINATION

BY MR. LI:

Q. Good morning, Mr. Mercer.

A. Good morning.

Q. I'm Luis Li. I think we met before?

A. Yes, we have.

Q. First of all, I want to thank you for your patience. I know you've been here, I think, three days now. So thank you very much.

I also want to -- maybe we can set some ground rules and explain some of them to you. I need to be able to ask some questions to you, and you need to try your best to answer those questions.

Can you do that?

A. I'll do my best.

Q. Thank you. It's easier for the record and it's just kind of how it's done. Okay?

A. Okay.

Q. The other thing is, when I ask a question, if Ms. Polk makes an objection, we need to wait so that the Court can rule on the objection and then however it goes. Then you can either answer or, depending on what the Court tells us to do, you can wait for another question.

A. Okay.

Q. I thank you very much in advance for that. I'm sorry if I seemed rude yesterday cutting you off a little bit. It's just that we need to make sure the record clear.

A. It's the way it goes.

Q. Thank you. Sir, you used to work at Angel Valley; correct?

A. That's correct.

Q. And you worked there until sometime in 2008?

A. Yeah. December 2008.

Q. December 2008. And you started, I believe, in March '08?

A. March of '08. Yes. As far as legal employment.

Q. Okay. And then prior to that you were a volunteer?

A. Yes.

Q. And when did you start as a volunteer?

A. I think we volunteered for six or eight months. I can't remember exactly when we started. It was summertime.

Q. Okay. Summertime. I'm just going to write summertime '07 --

A. Yes.

Q. -- through about March '08 you were a volunteer?

A. That's correct.

Q. And when we say "volunteer," your wife was also volunteering?

A. That's right.

Q. And when you started working at Angel Valley in March '08, did your wife also work at Angel Valley?

A. She continued as a volunteer.

Q. Okay. And Michael and Amayra Hamilton own Angel Valley; correct?

A. That's correct.

Q. They run something -- this is the Hamiltons. They run something called the "Angel Valley Ministries"?

A. Yes.

Q. And it hold itself out as a tax-exempt organization?

A. As far as I understand. I really don't know.

Q. That's what it says on its web site?

A. Yeah. I think so. Yeah.

Q. And the Angel Valley Retreat Center claims to be a church. Did you know that?

A. I think I've heard that before. Yeah.

Q. And Mr. and Mrs. Hamilton claim to be ordained ministers in the Order of Melchizedek.

A. I wouldn't know.

Q. Have you ever heard either one of them claiming to be ministers?

A. I've heard them claim to be ministers before but not that kind of a minister.

Q. Okay. So you've not heard them claim to be ordained ministers in Order of Melchizedek?

A. No. I never heard that before.

Q. Do you have any idea what that is?

A. No.

Q. Now, while you worked there at the Angel Valley Retreat Center, the Hamiltons rented out Angel Valley to various retreat groups; correct?

A. That's correct.

- 1 Q. Including James Ray International?
 2 A. **Yes.**
 3 Q. And we've heard from you that you at
 4 least witnessed three different James Ray
 5 International events at Angel Valley?
 6 A. **That's correct.**
 7 Q. And that's 2007, 2008 and 2009?
 8 A. **Yep.**
 9 Q. And while you worked there, Angel Valley
 10 Retreat Center also rented out its facilities to
 11 other retreat groups; correct?
 12 A. **That's correct.**
 13 Q. I think you named a few. The Agape?
 14 A. **Kerrie Dancing Butterfly.**
 15 Q. And so they rented their facilities out
 16 and provided room and board; correct?
 17 A. **Yes.**
 18 Q. Now, the folks there would eat the food
 19 that was supplied by the retreat center?
 20 A. **Yes.**
 21 Q. And that was vegetarian?
 22 A. **Yes. Most of the time.**
 23 Q. And some of these retreats would be two,
 24 three days? Some of them might be longer?
 25 A. **That's correct.**

- 1 Q. What's the longest retreat that you ever
 2 saw there?
 3 A. **I think five or six days.**
 4 Q. Five or six days. Now, during those five
 5 or six days with all these other retreat groups,
 6 they ate vegetarian food every day?
 7 A. **Sometimes. Every once in a while, they**
 8 **would have a chicken or a fish dish. It depends**
 9 **upon the group.**
 10 Q. Okay. But many were vegetarian?
 11 A. **Mostly it was vegetarian.**
 12 Q. In the course of that three years you
 13 were there where these folks in various retreats
 14 were eating vegetarian food, did you ever see any
 15 of those folks because they were eating vegetarian
 16 food sort of lose their ability to think for
 17 themselves?
 18 A. **Not as far as I know.**
 19 Q. Now, Mr. Hamilton and Ms. Hamilton
 20 charged the groups for room and board?
 21 A. **Yes. I assume so.**
 22 Q. And in 2009 Amayra and Michael Hamilton
 23 rented Angel Valley to Mr. Ray's company, JRI;
 24 correct?
 25 A. **Yes.**

- 1 Q. And this is for the Spiritual Warrior
 2 retreat in October 2009?
 3 A. **That's what I understand.**
 4 Q. Now, did you know that the Hamiltons
 5 charged \$1,600 per person for room and board?
 6 A. **No. I had no idea how much they charged.**
 7 Q. Did you know they charged total of about
 8 \$107,000 for five days of room and board?
 9 A. **No.**
 10 Q. Do you know if they're allowed to do that
 11 as a ministry?
 12 A. **I have no idea.**
 13 Q. While you were working there, do you know
 14 if the Hamiltons had permits to use their ministry
 15 for commercial purposes?
 16 A. **I wouldn't know.**
 17 Q. You don't know one way or another?
 18 A. **No.**
 19 Q. In any event, you were hired, I guess, in
 20 about October '09 to construct the sweat lodge?
 21 A. **That's correct.**
 22 Q. And, now, the sweat lodge -- it belongs
 23 to Angel Valley; right?
 24 A. **Yeah.**
 25 Q. I'm going to put on the ELMO, the

- 1 display, a map of Angel Valley, which is
 2 Exhibit 140. This, sir, is a map of Angel Valley;
 3 correct?
 4 A. **Yep.**
 5 Q. And you had said that I think you lived
 6 somewhere around there; is that correct?
 7 A. **Yes. That was the house that we rented.**
 8 Q. And the sweat lodge is right here;
 9 correct?
 10 A. **That's correct.**
 11 Q. And that's been the location of the sweat
 12 lodge, more or less, for the three years that
 13 you've been there; correct?
 14 A. **Yes.**
 15 Q. Because in 2007 there was one kiva;
 16 correct?
 17 A. **Uh-huh.**
 18 Q. And then in 2008, you replaced it with
 19 another kiva?
 20 A. **Yeah.**
 21 Q. And it's generally been in that same
 22 place?
 23 A. **Yes. It was right in the same spot.**
 24 Q. And the pump house, by my recollection,
 25 was somewhere around here?

1 **A. Yeah.**
 2 **Q.** Is that correct?
 3 **A. That's correct. It was right there.**
 4 **Q.** The pump house is right there. And
 5 that's where you got the tarps and such when you
 6 needed to build the sweat lodge?
 7 **A. Correct.**
 8 **Q.** Now, do you know -- you helped construct
 9 the sweat lodge in 2008?
 10 **A. Yes.**
 11 **Q.** Do you know whether or not the sweat
 12 lodge had a permit, a building permit?
 13 **A. I wouldn't know.**
 14 **Q.** You did not see while you were
 15 constructing the sweat lodge, did you, a county
 16 inspector come out and inspect the structure, did
 17 you?
 18 **A. I didn't see anybody.**
 19 **Q.** Now, if we could talk quickly about sort
 20 of the basic parts of a sweat lodge.
 21 If I may approach, Your Honor?
 22 THE COURT: You may.
 23 MR. LI: Thank you.
 24 **Q.** So can you see this?
 25 **A. Yeah.**

1 **Q.** I'll turn it so the jury can see it too.
 2 A sweat lodge is a pretty simple thing,
 3 isn't it?
 4 **A. Yeah.**
 5 **Q.** It's not a complicated structure?
 6 **A. Not at all.**
 7 **Q.** So you have a frame; right?
 8 **A. Kiva.**
 9 **Q.** And then you have some tarps and
 10 blankets?
 11 **A. Tarps and blankets.**
 12 **Q.** Then you have some stones?
 13 **A. Yeah.**
 14 **Q.** Grandfathers?
 15 **A. Yes.**
 16 **Q.** And you have some wood --
 17 **A. Wood.**
 18 **Q.** -- to heat the stones?
 19 **A. Yeah.**
 20 **Q.** And then you have the land that the kiva
 21 sits on?
 22 **A. That's correct.**
 23 **Q.** That's pretty much it; correct?
 24 **A. Yeah. Except for that big rubber deal.**
 25 **Q.** Right. Let's call the big rubber deal

1 part of the tarps and blankets. Okay? Come back
 2 to that in a second.
 3 I just wanted to mention a couple of
 4 things. I don't think we have these in the
 5 computer yet. Yesterday you looked at a couple of
 6 exhibits. I'm going to show you Exhibit 822, and
 7 then I'm also going to show you 821. Here is 822.
 8 Do you remember this picture?
 9 **A. Yeah.**
 10 **Q.** So this is the sweat lodge right here;
 11 correct?
 12 **A. Yes.**
 13 **Q.** And then this is sort of the comfort
 14 station over here; correct?
 15 **A. That's correct.**
 16 **Q.** And then these are the hoses -- or the
 17 hose that goes over to the front of the sweat
 18 lodge; correct?
 19 **A. Yeah.**
 20 **Q.** And this is after -- the day after when
 21 the sweat lodge has been pulled up?
 22 **A. Uh-huh.**
 23 **Q.** So it doesn't normally look like this?
 24 **A. No, it doesn't.**
 25 **Q.** But the hose is pretty much where the

1 hose was that evening; correct?
 2 **A. Yeah. Actually, we had two hoses, one on**
 3 **the other side so we could fill buckets.**
 4 **Q.** Over here, though; right?
 5 **A. No. It's split over here, and then it**
 6 **went around the other side of the sweat lodge.**
 7 **Q.** There's two -- well, here. See?
 8 **A. Okay. Yeah. They've been pulled over**
 9 **there.**
 10 **Q.** Okay. So there is two hoses over here.
 11 And they were on this side of the sweat lodge?
 12 **A. That's right.**
 13 **Q.** Just so we're clear, this is the backside
 14 of the sweat lodge; right?
 15 **A. That's right.**
 16 **Q.** And that's where you found the folks who
 17 had passed away?
 18 **A. Yes.**
 19 **Q.** Now -- okay. So we've talked a little
 20 bit about the wood frame. And then what you do
 21 with a kiva is you drape the blankets, the tarps,
 22 the sleeping bags, et cetera, over the frame;
 23 correct?
 24 **A. That's correct.**
 25 **Q.** When the lodge isn't in use, you take

1 them off, and then you dry them out in the sun;
 2 correct?
 3 **A. Uh-huh.**
 4 **Q.** The reason why you dry them, particularly
 5 the sleeping bags, is you don't want mold and
 6 mildew?
 7 **A. That's right.**
 8 **Q.** You don't want bugs?
 9 **A. Right.**
 10 **Q.** So you want to dry it out; correct?
 11 **A. Yes.**
 12 **Q.** Because if you left it wet and you stored
 13 them wet, they'd probably get mold and mildew?
 14 **A. I would think so.**
 15 **Q.** And they'd probably get some bugs in
 16 there too?
 17 **A. Yes.**
 18 **Q.** Then the frame remains on site?
 19 **A. Yes, it does.**
 20 **Q.** So, then, in October of 2009 Mr. Hamilton
 21 hired you, even though you were no longer working
 22 there, for the special purpose of building this
 23 sweat lodge; correct?
 24 **A. Yes.**
 25 **Q.** For the James Ray International group?

1 **A. That's correct.**
 2 **Q.** And you agreed to do that?
 3 **A. Yes, I did.**
 4 **Q.** And he hired you to tend the fire?
 5 **A. Yes.**
 6 **Q.** Let's be absolutely clear. You were not
 7 hired, were you, by James Ray International?
 8 **A. No, I was not.**
 9 **Q.** Now, the James Ray International
 10 participants, the folks who went into the sweat
 11 lodge -- they brought you a gratuity?
 12 **A. That's correct.**
 13 **Q.** At 3 to \$5 each, something like that?
 14 **A. Yes.**
 15 **Q.** Were you thankful?
 16 **A. Oh, sure.**
 17 **Q.** And was part of the tradition, right --
 18 **A. Yes.**
 19 **Q.** -- that if you're going to go into the
 20 sweat lodge, you should give a gift?
 21 **A. Honor the fire keeper.**
 22 **Q.** Honor the fire keeper. And you
 23 understood that that was the purpose behind the
 24 gratuities -- correct? -- was to honor you?
 25 **A. Yes.**

1 **Q.** Now, Angel Valley is the one who told you
 2 how to construct the sweat lodge; correct?
 3 **A. That's correct.**
 4 **Q.** And James Ray International did not tell
 5 you how to do that; correct?
 6 **A. No, they didn't.**
 7 **Q.** Now, James Ray International did not tell
 8 you what materials to use?
 9 **A. No.**
 10 **Q.** Angel Valley did?
 11 **A. Angel Valley did. Yes.**
 12 **Q.** Angel Valley maintained the ground around
 13 the sweat lodge?
 14 **A. That's correct.**
 15 **Q.** Angel Valley told you what wood to use?
 16 **A. That's right.**
 17 **Q.** Angel Valley told you what stones to use?
 18 **A. That's correct.**
 19 **Q.** Angel Valley told you where to store the
 20 tarps?
 21 **A. That's right.**
 22 **Q.** Angel Valley maintained and took care of
 23 the tarps?
 24 **A. Yes.**
 25 **Q.** And Angel Valley also provided the

1 material to make the frame?
 2 **A. Yes. It came out of the creek. They**
 3 **hired us to do it.**
 4 **Q.** When you took it out of the creek, was
 5 that on Angel Valley property or was that in the
 6 park land?
 7 **A. Some of it was Angel Valley property, and**
 8 **some of it was on the BLM land.**
 9 **Q.** Did Angel Valley tell you to go into BLM
 10 land and harvest the wood?
 11 **A. No.**
 12 **Q.** So you all just went out there?
 13 **A. We just went and found the best sticks**
 14 **that we could find.**
 15 **Q.** Can you do that?
 16 **A. I assume so. We didn't -- I don't know**
 17 **who you would call to find out if you can't do**
 18 **that.**
 19 **Q.** Just so we're clear on all of this,
 20 though, Mr. Ray, James Ray International, anybody
 21 associated with James Ray International -- they
 22 didn't tell you what to do about any of this stuff?
 23 **A. No, they didn't.**
 24 **Q.** They didn't supply any of this stuff?
 25 **A. No, they didn't.**

1 Q. They didn't control any of this stuff
 2 except for the few days -- really the two hours
 3 that they rented the sweat lodge on October 9,
 4 2009; correct?
 5 A. **That's correct.**
 6 Q. We'll come back to that in a second.
 7 Now, you testified that you went and
 8 helped in 2007 to do a JRI sweat lodge; correct?
 9 A. **Yeah.**
 10 Q. Now, a man named Gary Palisch was the
 11 fire tender?
 12 A. **Yes, he was.**
 13 Q. Who is Gary?
 14 A. **Gary is the general manager.**
 15 Q. What do you know about him?
 16 A. **That he was a businessman from Chicago**
 17 **and that he came to Angel Valley, and they hired**
 18 **him as the general manager.**
 19 Q. And he knew a lot about sweat lodges,
 20 though; right?
 21 A. **I don't know.**
 22 Q. Well, he taught you how to do it?
 23 A. **Well, he taught me from a memo.**
 24 Q. But he had -- let me describe it.
 25 A. **As far as I know, he knew more than I**

1 did.
 2 Q. That's all I'm asking. He sort of helped
 3 you figure out how you're supposed to do this all?
 4 A. **Yes.**
 5 Q. And he was the fire tender in 2007?
 6 A. **That's correct.**
 7 Q. You were sort of learning on the job from
 8 Gary in 2007?
 9 A. **That's right.**
 10 Q. That's all I'm saying. This guy knew
 11 what he was doing. He was the fire tender. And
 12 you were sort of learning from him?
 13 A. **Yeah.**
 14 Q. Now, you say that after the 2007 lodge,
 15 you saw three or four people throwing up?
 16 A. **Yes.**
 17 Q. And Mr. Palisch -- he was not alarmed,
 18 was he?
 19 A. **No. He wasn't alarmed.**
 20 Q. And, in fact, he told you this is normal,
 21 that sometimes people throw up at sweat lodges?
 22 A. **I don't know if he told me if it was**
 23 **normal or not, but he did say it happens.**
 24 Q. People throw up at sweat lodges because
 25 it's really hot?

1 A. **Yeah.**
 2 Q. And people sometimes go into sweat lodges
 3 for the purposes of having visions?
 4 A. **That's correct.**
 5 Q. And sometimes when you go into a sweat
 6 lodge, get into an altered state where you have a
 7 vision; correct?
 8 A. **I wouldn't know. I've never been in a**
 9 **sweat lodge.**
 10 Q. Okay. But you understand that many
 11 people do that for that purpose; correct?
 12 A. **Yes.**
 13 Q. And, in fact, many of the groups that you
 14 have participated with have done exactly that;
 15 correct?
 16 A. **As far as I know.**
 17 Q. You also said that you saw a person crawl
 18 out of the sweat lodge. And then when the air hit
 19 her, the cool air hit her, her eyes rolled back,
 20 and she sort of fell on the ground?
 21 A. **Yes, she did.**
 22 Q. And then she scraped her face?
 23 A. **Yeah. It was bleeding.**
 24 Q. Okay. And did she maybe hit her mouth?
 25 A. **Yeah. Her whole side of her face was**

1 scraped.
 2 Q. Okay. But the bleeding part. Did she
 3 maybe hit her mouth on something that split her
 4 lip?
 5 A. **The ground.**
 6 Q. Here's why I'm asking. Because -- and --
 7 you know -- I don't want to clown around. If
 8 you're just crawling like this and you fall down,
 9 you're falling about a foot.
 10 A. **Yeah. She's a rather large lady. As she**
 11 **was crawling, she had some momentum going because**
 12 **she wanted to get out of the sweat lodge. And she**
 13 **kind of torpedoed into the ground.**
 14 Q. So she sort of torpedoed into the ground.
 15 I just wanted to understand how the injury took
 16 place. Okay. She sort of, basically, like a nose
 17 tackle just torpedoed right into the ground?
 18 A. **She just went right out.**
 19 Q. And then you helped her up?
 20 A. **Yeah. Well, we dragged her out of there**
 21 **because she wasn't getting up.**
 22 Q. But you helped her out?
 23 A. **I helped her out.**
 24 Q. This is an example of where I'm asking a
 25 question. I'm just asking you, did you help her

1 up?

2 **A. I want to be specific.**

3 **Q.** Okay. But did you help her up?

4 **A. Yes.**

5 **Q.** Okay. And then you took her to a
6 location where she could cool off; correct?

7 **A. Yes.**

8 **Q.** Now, I don't want to -- I understand she
9 scraped her face and she probably slit her lip?

10 **A. Yeah.**

11 **Q.** You did not -- you didn't think that was
12 a life-threatening situation, did you?

13 **A. No.**

14 **Q.** Now, you also said that you helped about
15 10 people, give or take. You assisted 10 people;
16 correct?

17 **A. That's right.**

18 **Q.** And part of that, you said, was because
19 they were at the door and there were people behind
20 them and you needed to help them out quickly --

21 **A. That's true.**

22 **Q.** -- so that other people could get out?

23 **A. Yes.**

24 **Q.** So in some respects you were clearing the
25 door?

1 **A. Yes.**

2 **Q.** Now, when you assisted those people, you
3 then took them to another location. You sat them
4 down; correct?

5 **A. Yes.**

6 **Q.** And then you maybe put some water on
7 them?

8 **A. After I put them down, usually the Dream
9 Team or someone else came and took care of them
10 because I had to take care of the fire.**

11 **Q.** So somebody else put water on them to
12 cool them off?

13 **A. That's true.**

14 **Q.** Now, you did not conduct CPR on any of
15 those people, did you?

16 **A. No. They were all breathing.**

17 **Q.** And they all went over, and you released
18 them to the Dream Team folks to cool them off;
19 right?

20 **A. Yes.**

21 **Q.** And some of them got water to drink?

22 **A. Yeah.**

23 **Q.** And some of them just sat down?

24 **A. Yeah.**

25 **Q.** And some sat in the mud?

1 **A. Yes. Some just laid there.**

2 **Q.** They just laid in the mud; correct?

3 **A. Yeah.**

4 **Q.** Have you ever -- have you ever heard
5 about the sort of the Camp Pendleton Mud Run?

6 **A. No. I never heard about it.**

7 **Q.** It's a marine base in Camp Pendleton.
8 You're aware of that; right?

9 **A. No. I'm not sure where that is.**

10 **Q.** There is a marine base in Camp Pendleton.

11 And every year they have something called the "mud
12 run" where they literally just fill a field with

13 mud. Okay? And then people just run through it.

14 All right? And some of them lie down in it. And
15 that's what they do.

16 **A. Okay.**

17 **Q.** Let me ask you a question. Do you think
18 there is anything wrong with people lying in the
19 mud to cool off?

20 **A. No. Not at all.**

21 **Q.** And, in fact -- have you gone camping
22 before?

23 **A. Yes.**

24 **Q.** And sometimes when you're going camping,
25 have you ever jumped in a creek?

1 **A. Sure, I have.**

2 **Q.** Have you ever, like, laid in the mud?

3 **A. Sure.**

4 **Q.** There is nothing inherently weird or
5 crazy about laying in the mud, is there?

6 **A. Not at all.**

7 **Q.** Now, you also said you helped out as an
8 employee in 2008; correct?

9 **A. Yeah.**

10 **Q.** And so this is after your experience in
11 2007, you decided that you were going to work for
12 Angel Valley and be the fire tender in 2008;
13 correct?

14 **A. I wasn't the fire tender. I was
15 assisting again in 2008.**

16 **Q.** I apologize. Was Gary Palisch the fire
17 tender again?

18 **A. Yes.**

19 **Q.** And you were the assistant?

20 **A. Yes. Me with a few other people. Yeah.**

21 **Q.** Now, in 2008, you testified earlier that
22 you saw a lady cramping up?

23 **A. That's correct.**

24 **Q.** And her muscles wouldn't release?

25 **A. That's correct.**

1 **Q.** And you said she cramped up for something
2 like 30 to 45 minutes?

3 **A. That's as long as I saw her.**

4 **Q.** You weren't wearing a watch, but that's
5 your estimate?

6 **A. Yes.**

7 **Q.** This lady. What did she look like?

8 **A. She was a rather thin, short Japanese**
9 **lady.**

10 **Q.** So she was an Asian-looking woman?

11 **A. That's correct.**

12 **Q.** She might have been Chinese for all you
13 know?

14 **A. That's true. I'm sorry.**

15 **Q.** That's totally okay. Believe me. It's
16 okay. Was the lady's name Hermia?

17 **A. You know, I wouldn't be -- I'm not sure.**

18 **Q.** Okay. But if her name was Hermia and
19 she's Chinese, it might have been a Chinese lady
20 that you saw?

21 **A. Yes.**

22 **Q.** I believe you may have testified that she
23 was -- after you saw her, she was taken off
24 somewhere?

25 **A. Yes. I helped take her to the showers.**

1 **There was a gentleman there that said he was a**
2 **doctor. So I left.**

3 **Q.** This is the only person in the entire
4 three years you've been working any sweat lodge
5 that is an Asian American -- let's call her Chinese
6 because maybe she is. And she is the only person
7 you saw who had muscle cramps and then who was
8 taken off into the bathroom to get a shower?

9 **A. That's correct.**

10 **Q.** That's the only person you saw?

11 **A. The only one that was cramping.**

12 **Q.** Now, basically, the 2007 and 2008 sweat
13 lodges, in terms of your experience, you previously
14 told me, frankly, that they were pretty much the
15 same?

16 **A. Yes.**

17 **Q.** And that what you saw in '08 was pretty
18 much what you saw in '07?

19 **A. Exactly.**

20 **Q.** Now, in 2007 and 2008, did you see
21 anybody foaming at the mouth?

22 **A. Not that I can recall.**

23 **Q.** Okay. And you told Miss Polk that you
24 saw people's eyes in 2007 and 2008; correct?

25 **A. Yes, I did.**

1 **Q.** And I'm only going to ask you what you
2 observed. I'm not going to ask for your opinions
3 or medical opinions or anything like that because
4 you're not a doctor. Are you?

5 **A. I'm not a doctor.**

6 **Q.** And you are CPR trained?

7 **A. Yes, I am.**

8 **Q.** You learned all that in relation to scuba
9 diving; correct?

10 **A. That's correct.**

11 **Q.** Scuba diving. I think the principal
12 concerns relating to temperature are probably
13 hypothermia -- right? -- which means being too
14 cold?

15 **A. Yes.**

16 **Q.** You're not worried as a scuba diver, are
17 you, about getting too hot, are you?

18 **A. Sometimes, yes. When you sit on the boat**
19 **and have your wet suit on, you can get overheated**
20 **very easily.**

21 **Q.** What you do if you're on the boat and you
22 get too hot is you take your wet suit off; right?

23 **A. Well, in preparation for going diving,**
24 **sometimes you have to sit there and wait for a**
25 **while to wait for the other people to get in the**

1 **boat. You got your wet suit on and you're getting**
2 **hot. Yeah.**

3 **Q.** And you get hot, but then you just need
4 to cool yourself off; right?

5 **A. That's correct.**

6 **Q.** So it's not -- I'm not asking you for
7 opinions as a doctor or something.

8 **A. I understand.**

9 **Q.** Just what you observed.

10 **A. Uh-huh.**

11 **Q.** Now, you said you looked at some of these
12 folks' eyes; correct?

13 **A. That's correct.**

14 **Q.** Did you see pinpoint pupils in any of the
15 people in '07 or '08?

16 **A. I couldn't tell you.**

17 **Q.** As you sit here today, you don't recall
18 seeing anybody with pinpoint pupils?

19 **A. No, I don't. No.**

20 **Q.** I'm going to hand up a bunch of exhibits,
21 which are numbered exhibits 841 through 888. I
22 meant 881.

23 Sorry, Your Honor.

24 While they're looking, the first set of
25 photos, 841 through 848, are photos taken by your

1 wife at the James Ray sweat lodge in 2008.

2 **A. All right.**

3 **Q.** The second set, 849 through 881 were
4 taken by another participant. I'll show them to
5 you in a second.

6 Your Honor, we move in exhibits 841
7 through 881.

8 THE COURT: Ms. Polk?

9 MS. POLK: No objection, Your Honor.

10 THE COURT: 841 through 881 are admitted
11 inclusive.

12 (Exhibits 841 through 881 admitted.)

13 **Q.** BY MR. LI: This first set I'm going to
14 show you are the photos that your wife took. I'm
15 going to ask if you recognize the scene generally?
16 If you can sort of leaf through them.

17 **A. I recognize the photos.**

18 **Q.** Okay. And those are of the sweat lodge
19 ceremony in 2008 conducted by James Ray
20 International; right?

21 **A. I think so.**

22 **Q.** What's your hesitation?

23 **A. Well, just because of this flag back**
24 **here. I don't remember that flag, but they sure**
25 **could have been there.**

1 **Q.** Most sweat lodges look like this,
2 basically?

3 **A. Well, no.**

4 **Q.** But most of the James Ray International
5 sweat lodges in 2007, 2008 look like that?

6 **A. Yes.**

7 **Q.** Now, I'm going to show you another group
8 of photographs, which are numbered 849 through 881.
9 If you could just look through them. And then they
10 were taken by another person. It's the same sweat
11 lodge.

12 **A. Okay.**

13 **Q.** See if you recognize it.

14 **A. I've never seen these pictures before,**
15 **but I do recognize some of the people.**

16 **Q.** Take a look at Exhibit 855. Is that you?

17 **A. Yeah. It could be. That looks like me.**

18 MR. LI: If we could publish Exhibit 855.

19 THE WITNESS: That looks like me.

20 **Q.** BY MR. LI: That's you; right?

21 **A. I think so.**

22 **Q.** The state gave this to us and told us it
23 was the 2008 sweat lodge ceremony for JRI. You
24 don't have any reasons to dispute that, do you?

25 **A. No.**

1 **Q.** If you look at this Asian lady's T-shirt,
2 it says "Dream Team" on it; right?

3 **A. Yes, it does.**

4 **Q.** Underneath the Dream Team thing, it
5 says -- pardon me, but it says "James Ray
6 International"?

7 **A. Okay.**

8 **Q.** Do you have any reason to dispute that?

9 **A. No.**

10 **Q.** Why don't you take a look at the rest of
11 them and see if you recognize them as pictures
12 from 2008.

13 By the way, is that the lady there?

14 **A. Yeah. That is her.**

15 **Q.** That's Hermia Nelson?

16 **A. Yeah. That's the one that was all**
17 **cramped up.**

18 **Q.** Okay.

19 **A. I wasn't sure if I could say anything.**

20 **Q.** That's okay. If you recognize her, you
21 recognize her. Not that it's a big deal. She's
22 Chinese.

23 **A. I'm sorry if I offended anyone.**

24 **Q.** It's okay. You didn't.

25 **A. Yeah. I particularly remember this woman**

1 **here too.**

2 **Q.** We can blow this up, the Dream Team thing
3 up there. It says "jamesray.com," Dream Team --
4 "James Ray International"?

5 **A. Uh-huh. And I recognize another guy back**
6 **there too. But this woman -- I remember her.**

7 **Q.** We'll go through these photos. I just
8 want you to take a quick look at them, see if you
9 recognize them, and we'll go through the photos.

10 **A. Okay.**

11 **Q.** These are all photos from the 2008 sweat
12 lodge ceremony conducted by James Ray
13 International?

14 **A. If that's what you tell me. I don't know**
15 **the people. I've seen that lady before. Yes. It**
16 **is. Because I recognize that other lady in the**
17 **pink. Yes.**

18 **Q.** If I represent to you that this is every
19 single photograph that we have that was provided to
20 us by the state, you would not have any reason to
21 dispute that, would you?

22 **A. No.**

23 **Q.** Good, bad and ugly, every single
24 photograph?

25 **A. Yeah. I don't know why you would**

1 **withhold them.**

2 **Q.** Okay. And these are the photographs that
3 your wife took; correct?

4 **A. Yes. I think there are some more,**
5 **though. I don't know.**

6 **Q.** Did she provide more to the state?

7 **A. I don't know. She just gave them the**
8 **pictures. I don't know which ones they were. That**
9 **was her doing.**

10 **Q.** So she may or may not have given more
11 photographs to the state?

12 **A. I don't know.**

13 **Q.** If I could just start. We're going to
14 start from the beginning. Photograph -- sorry,
15 Exhibit 841. Again, I'm just going to ask your
16 observations, what you saw, what you did. I'm not
17 going to ask for your opinions, sir.

18 This is the scene in 2008 at the sweat
19 lodge ceremony?

20 **A. Yes.**

21 **Q.** And you can see there is a hose over here
22 where people are getting sprayed?

23 **A. Yes.**

24 **Q.** And there is a big puddle of water where
25 some people are lying down, cooling off?

1 **A. Yes.**

2 **Q.** And some people have towels around them?

3 **A. Yes.**

4 MR. LI: If I could look at Exhibit 842.

5 **Q.** Here is that same scene from maybe a
6 slightly different time?

7 **A. Yes.**

8 **Q.** And you see this guy over here? Does he
9 have maybe a camera in his hand?

10 **A. Yeah. That could be.**

11 **Q.** Is he taking pictures of people?

12 **A. I don't know. Looks like it could be a**
13 **camera.**

14 **Q.** See the little -- what do you call that
15 wrist thing? Wrist strap? If we can take a look
16 at Exhibit 843. Here is some more folks spraying
17 the hose on this lady who is lying down with her
18 head sort of like almost doing a crunch pose?

19 **A. Uh-huh.**

20 **Q.** And over here you see a guy, he may be
21 taking a picture?

22 **A. Looks like it.**

23 **Q.** And then over here I don't know what this
24 guy is doing. Might be a camera. No. It's
25 tobacco pouches?

1 **A. Yeah. Looks like it.**

2 **Q.** All right.

3 If we could look at Exhibit 844.

4 These are some folks all lying down.

5 This lady here in the pink -- she is in some sort
6 of a pink and green. She's in a fetal possession,
7 sort of a baby pose?

8 **A. Yes.**

9 **Q.** You're familiar with the yoga baby pose?

10 **A. No.**

11 **Q.** So these folks --

12 If we can pull back a little.

13 This lady here has a cup in her hand?

14 **A. Uh-huh.**

15 **Q.** And she was drinking, I presume?

16 **A. Either that or pouring it on herself.**

17 **Q.** Yep. And there is another lady next to
18 her with another cup on her?

19 **A. Yep.**

20 **Q.** And here's a lady walking by with a cup?

21 **A. Yep.**

22 MR. LI: If we could look at Exhibit 845 --
23 846.

24 **Q.** This is a different angle on the same
25 scene?

1 **A. Yeah. Looks like it.**

2 **Q.** And this is 846; correct? Sorry. 846.

3 This is 846. You see the folks with the Dream
4 Team?

5 **A. Yep.**

6 **Q.** There is a lady over here with a cap on.
7 She seems to be maybe taking a picture?

8 **A. Yep.**

9 **Q.** And then you see the fellow with the
10 pretty ripped abs taking pictures of people?

11 **A. Yep.**

12 **Q.** And go back. See these folks lying down
13 there in the mud next to the hose?

14 **A. I see them.**

15 **Q.** Okay. That lady was the one who was
16 earlier kind of in a crunch pose?

17 **A. Uh-huh.**

18 **Q.** You saw a photograph, which we'll see
19 later, where she's kind of throwing you the
20 thumbs-up sign. You saw that in the pile, didn't
21 you?

22 **A. I don't know if I --**

23 **Q.** We'll go through it then.

24 **A. Uh-huh.**

25 MR. LI: If I can go to the next exhibit,

1 which is 847.

2 **Q.** Now, if we could focus on the lady in the
3 green shorts. She's now shifted from that one
4 position to another position; right?

5 **A. Looks correct. Yes.**

6 MR. LI: And pop back.

7 **Q.** You know, you can see some folks sort of
8 standing around on the right there walking around?

9 **A. Uh-huh.**

10 **Q.** Drinking water?

11 **A. Drinking water.**

12 MR. LI: If we could go back.

13 **Q.** And you can see some folks in the back
14 near the tent. There is a lady in a bikini. She's
15 sort of talking to these people. They're all sort
16 of sitting around?

17 **A. Yes.**

18 MR. LI: If we can take a look at 848.

19 **Q.** These are some of the folks by the tent;
20 right?

21 **A. Yeah.**

22 **Q.** And you can see there they're eating some
23 watermelon?

24 **A. Yes.**

25 **Q.** Lady has a big smile on her face?

1 **A. She's smiling all right.**

2 **Q.** How about 849? This lady with the blonde
3 buzz cut here. She was one that you saw in an
4 earlier picture who was kind of lying on her back
5 with a cup on her chest; right?

6 **A. It could be. Yes.**

7 **Q.** You want to look at 845 or something like
8 that? 841?

9 Yeah. That lady right there with the
10 green top and sort of blonde buzz cut?

11 **A. Yeah. Looks like it.**

12 MR. LI: If we can go back to 849.

13 **Q.** That's the same lady; right?

14 **A. Yes. Looks like her.**

15 **Q.** She's wearing the green top?

16 **A. Black shorts.**

17 **Q.** She's eating some watermelons with this
18 other person here?

19 **A. Yep.**

20 MR. LI: If we can take a look at 850 -- 851.

21 My apologies.

22 **Q.** These are some folks smiling at the
23 camera?

24 **A. That's correct.**

25 **Q.** If we could look at 852.

1 **A. Yes.**

2 **Q.** And there is some Dream Team folks there
3 giving fruit to a lady who has got a towel around
4 her?

5 **A. Uh-huh.**

6 **Q.** There is another lady who is sort of
7 lying on her side with her eyes closed with another
8 Dream Teamer sort of hanging over her and one
9 sitting there in the back; correct?

10 **A. Yes.**

11 **Q.** Somebody took a picture of that; right?
12 Because that's what you're looking at?

13 **A. Apparently.**

14 **Q.** 853. This is the sweat lodge?

15 **A. Yes, it is.**

16 **Q.** And you can see by the door there are
17 some silver tarps?

18 **A. Yes.**

19 **Q.** That's the middle layer that you're
20 describing earlier; right?

21 **A. That's correct.**

22 **Q.** And it gets disturbed a little when
23 things get moved around; right?

24 **A. Yes.**

25 MR. LI: If we could look at 854.

1 **Q.** This is another angle on that lady, the
2 blonde lady, eating the watermelon, and she's
3 sitting up there?

4 **A. Yes, she is.**

5 MR. LI: Let's take a look at 855.

6 **Q.** We already looked at 855. This is Hermia
7 Nelson and this other guy. And she's eating some
8 watermelon; right?

9 **A. Yeah.**

10 **Q.** Do you know who this other guy is?

11 **A. No. I don't know his name.**

12 **Q.** Now I remember. That's you in the back
13 there; right?

14 **A. Yes.**

15 MR. LI: If we could take a look at 856.

16 **Q.** This is just more folks, one person
17 smiling for the camera?

18 **A. Yep.**

19 **Q.** Folks drinking water in the back?

20 **A. Yep.**

21 **Q.** You had said earlier, and I just want to
22 confirm this, that this is, basically, what 2007
23 looked like too?

24 **A. That's correct.**

25 MR. LI: If we can take a look at 857.

1 Q. Now, this is a lady who has done the
2 sweat lodge; correct?
3 A. **Apparently. Yes.**
4 Q. You have no reason to think she hasn't?
5 A. **No. In her bathing suit. No.**
6 Q. And she's --
7 A. **She's empowered.**
8 Q. I'm going to ask you to look at
9 Exhibit 858. And you see that fellow there? He's
10 smiling for the camera?
11 A. **Yes, I do.**
12 MR. LI: Let's look at 859.
13 Q. More folks, another lady smiling for the
14 camera?
15 A. **Yeah.**
16 Q. In back there is a lady kind of lying in
17 the mud?
18 A. **Yeah.**
19 Q. 850. These are just more folks at the
20 sweat lodge ceremony?
21 A. **That's correct.**
22 Q. Now, look in the back there. You see all
23 that -- see all those tarps and blankets and what
24 have you?
25 A. **Yes, I do.**

1 Q. What are they covering?
2 A. **Construction wood.**
3 Q. So you had said earlier, I believe, that
4 they used the tarps for all kinds of things.
5 Correct?
6 A. **That's correct.**
7 Q. All over Angel Valley?
8 A. **Yes.**
9 Q. Correct?
10 A. **Yes.**
11 Q. You also said earlier, I believe, that
12 one tarp looks like another?
13 A. **Yes.**
14 Q. And you can't tell them apart?
15 A. **No.**
16 Q. You don't number them?
17 A. **I don't number them.**
18 Q. There is no bar code on them?
19 A. **No.**
20 Q. I'm going to show you another exhibit
21 just to show you that we're showing you every
22 single one. 861. It's just somebody lingering in
23 front of the sweat lodge?
24 A. **Yes.**
25 Q. 862. Here's some water being sprayed

1 around and a lady kind of crunching up; right?
2 A. **Uh-huh.**
3 Q. I think that's your wife in the back
4 there. Is that right?
5 A. **Yeah. And Anita.**
6 Q. Okay. There's your wife and Anita in the
7 back. And your wife has a smile on her face?
8 A. **Yes, she does.**
9 Q. And then in the back -- you could pop
10 out -- there is some lady who is sort of walking up
11 the path --
12 You don't have to blow it up.
13 But there's some lady walking up the path
14 going to her room; right?
15 A. **Yes.**
16 Q. Exhibit 863 is more folks getting sprayed
17 with water?
18 A. **That's correct.**
19 Q. 864 is a guy massaging somebody's feet?
20 A. **Yes.**
21 Q. You see the pile of rocks in the back and
22 the pitchforks and everything like that?
23 A. **Uh-huh.**
24 Q. Is that the pile of rocks that you used
25 and the pitchfork that you used to tend the fire?

1 A. **Those are old rocks from other sweat**
2 **lodges.**
3 Q. So those are rocks that have been used
4 previously but are not being used ever again?
5 A. **That's true.**
6 Q. They'll be made into a wall?
7 A. **Yes. Or just spread around the property.**
8 MR. LI: If we can zoom in on sort of the
9 rakes and the hose and the shovels.
10 Q. Those are the rakes -- not rakes.
11 Pitchforks that you used to move the rocks?
12 A. **Yes. To take them out of the fire.**
13 Q. And then in the back there is a big pile
14 of wood?
15 A. **Yeah.**
16 Q. Did you use some of that wood in 2008?
17 A. **No.**
18 MR. LI: If we could zoom in on -- I mean, see
19 865, please.
20 Q. This is just more folks lying in the mud?
21 A. **That's correct.**
22 Q. Again, there is your wife in the back?
23 A. **Yep.**
24 Q. And I'm not sure it's a smile, but it's a
25 fairly open expression?

1 **A. Yes.**
 2 MR. LI: If we can zoom back out.
 3 **Q.** And then there is a lady walking off or
 4 somebody walking off to their rooms?
 5 **A. Yeah.**
 6 MR. LI: We can take a look at Exhibit 867.
 7 **Q.** 867. That's a Dream Teamer sort of
 8 talking to some folks?
 9 **A. Looks like.**
 10 **Q.** And this fire pit here in the front --
 11 that's where people would burn their journals and
 12 what have you?
 13 **A. Well, the fire pit that you see right**
 14 **here?**
 15 **Q.** Yeah. What is that fire pit?
 16 **A. That's the fire for the rocks.**
 17 **Q.** That's the fire for the rocks?
 18 **A. Just burning down.**
 19 **Q.** All right. And there is some blankets
 20 off in the back off to the left; correct?
 21 **A. Uh-huh.**
 22 MR. LI: Let's take a look at Exhibit 868.
 23 **Q.** This is a lady who is lying down in a
 24 pink bathing suit and some folks are tending to
 25 her?

1 **A. Yes. The lady right in front of us**
 2 **here -- is that who you are talking about?**
 3 **Q.** Yes. Correct.
 4 **A. Yes. I remember her particularly.**
 5 **Q.** These folks -- you didn't perform CPR on
 6 her, did you?
 7 **A. Not on her. No. But I did talk with**
 8 **her.**
 9 **Q.** All right. And she was not particularly
 10 with it, was she?
 11 **A. She didn't know her name or where she was**
 12 **or what the date was or anything like that.**
 13 **Q.** Right. But you didn't -- I'm just asking
 14 you. You didn't perform medical services on her?
 15 **A. Well, no. She's breathing.**
 16 **Q.** Her lips weren't turning blue, were they?
 17 **A. They weren't turning blue. But her eyes**
 18 **were going right through you, and she had no idea**
 19 **where she was.**
 20 **Q.** Okay. Well, let me ask you this: She
 21 had a pulse; correct?
 22 **A. Yeah.**
 23 **Q.** And she was breathing?
 24 **A. She had a pulse and she was breathing.**
 25 **Q.** She was not cyanotic, was she?

1 **A. No.**
 2 **Q.** She did not suffer from apnea, did she?
 3 **A. Not as far as I know.**
 4 **Q.** She was not asystolic, was she?
 5 **A. I don't even know what that word means.**
 6 **Q.** It means her heart hadn't stopped.
 7 **A. No. But she didn't know who she was.**
 8 **Q.** I understand.
 9 **A. Okay.**
 10 **Q.** Now, I'm going to ask you to look at
 11 Exhibit 869. So this is a lady -- that same lady
 12 in the bikini who's sort of lying prone; right?
 13 This is a different lady.
 14 **A. Okay.**
 15 **Q.** And the lady next to her is smiling for
 16 the camera?
 17 **A. Yes.**
 18 **Q.** I'm going to ask you to look at
 19 Exhibit 870. This is that guy --
 20 **A. Yes. They took a lot of pictures of him.**
 21 **Q.** I guess they did. Would it surprise
 22 you -- 871. This guy doesn't get quite as many
 23 pictures, but he is smiling?
 24 **A. Yeah. He's smiling all right.**
 25 **Q.** And you can see that they're spraying

1 people in the back?
 2 **A. Yep.**
 3 **Q.** 872. Remember I talked about this lady
 4 who was lying in the mud sort of on her back in
 5 some of the earlier pictures? You remember that?
 6 **A. Uh-huh.**
 7 **Q.** And I asked you whether or not -- you
 8 know -- some of them -- she might have popped up at
 9 some point and given a thumbs up?
 10 **A. Okay.**
 11 **Q.** She's not giving the thumbs up there;
 12 right?
 13 **A. No. Not there.**
 14 **Q.** But she's sitting up spraying somebody,
 15 like, I'm going to get you, kind of?
 16 **A. That's what it looks like.**
 17 **Q.** And the lady in the back is sort of
 18 talking to this other lady who seems to be smiling,
 19 and they're kind of talking to each other closely?
 20 **A. That's correct.**
 21 **Q.** 873. Now, that's that lady who was
 22 spraying other people. Now she's kind of spraying
 23 herself; right?
 24 **A. That's right.**
 25 **Q.** And the lady next to her who was talking

1 to this lady, here she's kind of sitting up and
2 smiling for the camera; correct?

3 **A. Yeah, she is.**

4 **Q.** Show you another picture. 874. This is
5 that lady who was kind of lying down in the mud
6 next to those two other ladies with the hose;
7 right?

8 **A. That's right.**

9 **Q.** And now she's sitting up sort of smiling
10 at the camera with a drink in her hand?

11 **A. Yeah.**

12 MR. LI: And if we could look at 875.

13 **Q.** These are the Dream Team members pointing
14 at people, and Hermia is smiling and she's got a
15 camera?

16 **A. Yes.**

17 **Q.** 876. This is that lady who was kind of
18 talking closely to the other woman. And they were
19 both lying in the mud, and she's sort of smiling at
20 the camera?

21 **A. Yes.**

22 **Q.** This is the thumbs-up picture I was
23 talking about. 877.

24 **A. There you go.**

25 **Q.** So that lady was lying on her back in one

1 picture. In this picture she's short of throwing
2 the thumbs up?

3 **A. Yep.**

4 **Q.** 878. Just another picture of the end of
5 the sweat lodge ceremony?

6 **A. That's correct.**

7 **Q.** 879. Same thing. Those are the two
8 ladies, one who gave the thumbs up?

9 **A. Looks like them.**

10 **Q.** 880. Guy smiling at the camera?

11 **A. Yep.**

12 **Q.** Getting a drink or something?

13 **A. Yep.**

14 **Q.** And then last but not least, 881. Those
15 are -- that was the lady who was kind of lying down
16 next to those two other ladies. She's now having a
17 drink in her hand, and there's another lady in a
18 bikini next to her?

19 **A. Yep.**

20 MR. LI: So if we could go back to take a look
21 at 857.

22 **Q.** Now, this lady who we already looked at
23 just a little while ago -- did you ever -- did you
24 know her?

25 **A. No. I don't know her.**

1 **Q.** Did you meet her?

2 **A. It's possible.**

3 **Q.** One of the questions I'm just going to
4 ask you so we're absolutely clear, this 2008
5 ceremony looks pretty much like the 2007 ceremony;
6 correct?

7 **A. Yep.**

8 **Q.** Some people -- most of the people that
9 you see in that picture are not only okay, they're
10 smiling?

11 **A. Yeah. They're doing good.**

12 **Q.** And some people are even throwing their
13 arms up in the air?

14 **A. That's correct.**

15 **Q.** Did you see people doing that?

16 **A. Yeah. Sure, I did.**

17 **Q.** In -- I'm going to skip ahead just for a
18 second to 2009. Did you see a lady named Jeanne
19 Armstrong, the doctor, come out -- do you remember
20 the doctor?

21 **A. I remember somebody saying she was a
22 doctor.**

23 **Q.** Do you remember her coming out of the
24 sweat lodge and doing that?

25 **A. Not personally I don't.**

1 **Q.** If she said she did that, you wouldn't
2 have any reason to dispute that?

3 **A. No. I could have been looking at the
4 fire or doing something else.**

5 **Q.** Now, some people are lying around in the
6 mud cooling off?

7 **A. That's correct.**

8 **Q.** And some people look kind of nauseated?

9 **A. Yeah.**

10 **Q.** And one person, you described to us,
11 looked right through you?

12 **A. Actually there was two people. I didn't
13 see the other one in the photos.**

14 **Q.** So two people looked right through you?

15 **A. Yeah.**

16 **Q.** But the rest of them were walking around
17 smiling, drinking water, taking pictures of each
18 other?

19 **A. Yeah.**

20 **Q.** Those people who were looking right
21 through you, you saw pictures of them right there.
22 They were not foaming at the mouth, were they?

23 **A. Not as far as I remember.**

24 **Q.** In that picture you didn't see frothy
25 sputum?

1 **A. No.**
 2 **Q.** And it's hard to tell from those
 3 pictures, but you didn't open up their eyes and see
 4 pinpoint pupils, did you?
 5 **A. Not that I recall.**
 6 **Q.** You didn't take their pulse and find what
 7 they call "tachycardia", which is a fast heartbeat,
 8 did you?
 9 **A. No, I didn't.**
 10 **Q.** You didn't do any medical test on any of
 11 those people, did you?
 12 **A. No. I'm just trained for an emergency**
 13 **response.**
 14 **Q.** Just to do CPR?
 15 **A. Yeah. And cuts or something like that,**
 16 **just until the paramedics get there.**
 17 **Q.** And you didn't do those types of services
 18 for those -- for any of the people in 2007, 2008;
 19 correct?
 20 **A. No, I did not.**
 21 **Q.** In fact, Mr. Palisch told you that
 22 sometimes when people come out of sweat lodges,
 23 they throw up?
 24 **A. Yep.**
 25 **Q.** Now, yesterday Ms. Polk asked you some

1 questions about sweat lodges, other sweat lodges.
 2 **A. Uh-huh.**
 3 **Q.** And you testified that the other sweat
 4 lodges that you participated in lasted about half
 5 an hour shorter than the James Ray sweat lodges,
 6 give or take?
 7 **A. Yeah. Give or take.**
 8 **Q.** It's hard to measure because you're not
 9 wearing a watch?
 10 **A. Exactly.**
 11 **Q.** And you also testified that the lodges
 12 used or at least asked for fewer rocks?
 13 **A. Quite a bit fewer rocks.**
 14 **Q.** You remember Ms. Polk asked you all these
 15 questions about 2009? She said how many rocks did
 16 they ask for, and you said a hundred?
 17 **A. That's how many we heated up. Yes.**
 18 **Q.** And we'll get a little more to this in a
 19 bit. Would it surprise you if you learned that
 20 actually about 50-some-odd rocks were used?
 21 **A. No.**
 22 **Q.** Now, you did tell Detective Diskin, did
 23 you not, that the other lodges did, quote, get as
 24 hot?
 25 **A. I would think they got as hot. But I**

1 **wasn't inside, so I really wouldn't know**
 2 **personally. And there was a lot less people in**
 3 **there too.**
 4 **Q.** Right. And that's an interesting point
 5 that I want to explore with you for a second. You
 6 did not actually go inside the sweat lodges?
 7 **A. No.**
 8 **Q.** You don't have a thermometer stuck under
 9 the tent like one of those baking thermometers?
 10 **A. No, I don't.**
 11 **Q.** You have no idea what the actual
 12 temperature is in any of the sweat lodges?
 13 **A. No. That's for the pourer to regulate.**
 14 **Q.** Exactly. But it's one of these things
 15 where I need to ask you a question about what you
 16 know.
 17 **A. Okay. I know that's what the pourer**
 18 **does.**
 19 THE COURT: Mr. Mercer, please wait for the
 20 question and then answer just the question that the
 21 attorney asks.
 22 Mr. Li.
 23 MR. LI: Thank you, Your Honor.
 24 **Q.** All I'm asking you is, you personally
 25 don't have personal knowledge about what the

1 temperature is inside any of the sweat lodges?
 2 **A. No, I don't.**
 3 **Q.** You do not have a temperature gauge
 4 inside any of the sweat lodges?
 5 **A. No, I don't.**
 6 **Q.** So you have no way of knowing whether one
 7 lodge is hotter than another?
 8 **A. No.**
 9 **Q.** Now, let's talk for a second about the
 10 hundred rocks that were requested by JRI for that
 11 sweat lodge. That was the event coordinator who
 12 came and asked you for that; right?
 13 **A. I didn't gather the rocks. They were**
 14 **just there, placed there for us.**
 15 **Q.** So you had a hundred rocks, give or take?
 16 Exactly a hundred rocks?
 17 **A. Exactly a hundred rocks.**
 18 **Q.** They were just there for you?
 19 **A. Yes.**
 20 **Q.** Ms. Polk also asked you how many rocks
 21 were ordered for 2008. Remember that?
 22 **A. Uh-huh.**
 23 **Q.** You said something like 80?
 24 **A. I think so. I don't really recall**
 25 **exactly, but I know there was quite a few rocks.**

1 Q. Okay. And then she also asked you how
2 many were ordered for 2007?
3 A. Yes.
4 Q. And you said something like 80?
5 A. Yes.
6 Q. When you said a hundred rocks were
7 used -- or asked for in October 2009, were you
8 intending to imply to the jury that more rocks were
9 used in 2009 than in any other year?
10 A. No. I just heated up more rocks.
11 Q. Because, in fact, you actually told
12 Detective Diskin in 2009 that Mr. Ray, for the
13 October ceremony, was using fewer rocks than
14 normal?
15 A. That could possibly be. Yes.
16 Q. Well, did you or did you not tell him
17 that?
18 A. If that's what the transcript said, yes.
19 Q. I don't want to force words into your
20 mouth.
21 A. That's fine.
22 Q. Would it refresh your recollection to
23 take a look at the transcript?
24 A. Sure, it would.
25 Q. This is Exhibit 861. Page 8, line 16

1 through 19. Take a look. I've highlighted it.
2 A. Okay.
3 Q. So Detective Diskin asked you, do you
4 think he was calling for more than normal?
5 And you said --
6 A. I said, less than normal.
7 Q. And you said -- and then you said, yeah.
8 Because in the years before -- you know -- he'd get
9 10, 12 rocks every time. And this time, a couple
10 times, he only asked for 4, you know?
11 A. That's true.
12 Q. And that's what you said?
13 A. That's what I said.
14 Q. Because that was correct?
15 A. Yep.
16 Q. And you gave the statement the day after
17 the accident?
18 A. That's true.
19 Q. So your memory was fresh?
20 A. Yes.
21 Q. And there was no ambiguity in -- in what
22 Detective Diskin was asking you. Detective Diskin
23 asked you, did he use more rocks?
24 And you said, no. He used fewer rocks.
25 Correct?

1 A. That's correct.
2 Q. Now, the detectives -- after this
3 accident happened, you were interviewed twice;
4 right?
5 A. That's correct.
6 Q. One time in the hospital?
7 A. Yes.
8 Q. And the second time by Detective Diskin
9 on site?
10 A. That's correct.
11 Q. Now, when you were interviewed in the
12 hospital, you understood that there was a police
13 officer who was asking you and your wife questions
14 about what happened in an incident where some folks
15 passed away?
16 A. Yes.
17 Q. It was a very important interview;
18 correct?
19 A. As far as I know, I guess. Yes.
20 Q. I'm sorry. Bad question. You understood
21 it was important for you to be truthful?
22 A. Yes.
23 Q. You didn't think it was some sort of
24 informal chit chat?
25 A. No. She was taking a statement.

1 Q. She was taking a statement from you on
2 October 8, 2009?
3 A. In the hospital.
4 Q. In the hospital the night after two
5 people passed away?
6 A. That's correct.
7 Q. And later on another person passed away?
8 A. Yes.
9 Q. And now we're sitting here in court with
10 manslaughter charges against Mr. Ray?
11 A. That's correct.
12 Q. That was an important statement that you
13 made?
14 A. Yes.
15 Q. And, as you told Ms. Polk, you
16 cooperated?
17 A. Sure.
18 Q. And you understood that it was really
19 important that you give full and complete and
20 accurate information to the detectives; correct?
21 A. Yes. That is important.
22 Q. And for it to be truthful?
23 A. Yes.
24 Q. Now, you were sitting next to your wife
25 in the hospital; correct?

1 **A. Yes.**
 2 **Q.** And she had gone to the hospital because
 3 she had felt nausea?
 4 **A. Yes.**
 5 **Q.** And she had a headache?
 6 **A. Yes.**
 7 **Q.** And then paramedics -- you went up to the
 8 dining hall; correct?
 9 **A. I went to the dining hall.**
 10 **Q.** About what time was that? Do you
 11 remember?
 12 **A. 10:00, 10:00, 11:00, 10:00, something**
 13 **around there. It was later.**
 14 **Q.** 10:00 or 11:00?
 15 **A. 10:00 or 11:00.**
 16 **Q.** And the dining hall was filled with
 17 participants; right?
 18 **A. Yes.**
 19 **Q.** And there were detectives at various
 20 tables; right?
 21 **A. All I saw was the paramedics.**
 22 **Q.** Were the detectives there taking
 23 statements from people there?
 24 **A. I didn't see them. I went in and just**
 25 **saw the paramedic and grabbed him and took him over**

1 **to my house.**
 2 **Q.** You went into the dining hall. You saw a
 3 paramedic you said?
 4 **A. I need you to check out my wife.**
 5 **Q.** Because she's not feeling well?
 6 **A. Yes.**
 7 **Q.** And you were worried that something may
 8 have happened?
 9 **A. Yes.**
 10 **Q.** Understandably so?
 11 **A. Uh-huh.**
 12 **Q.** So she went to the hospital; correct?
 13 **A. That's correct.**
 14 **Q.** And she got an I.V.?
 15 **A. Yes.**
 16 **Q.** She got some oxygen?
 17 **A. That's correct.**
 18 **Q.** And she got some sort of antinausea
 19 medication?
 20 **A. Yeah. I think so.**
 21 **Q.** And headache medication?
 22 **A. I can't remember exactly what they gave**
 23 **her.**
 24 **Q.** Now, going back to your interview, you're
 25 sitting there in the hospital. The detective comes

1 up. It's the night of the accident. And she takes
 2 your statement?
 3 **A. That's true.**
 4 **Q.** And you and your wife, Mrs. Mercer, are
 5 sitting next to each other?
 6 **A. Uh-huh.**
 7 **Q.** And you guys are sort of -- I think you
 8 said yesterday you were, basically, talking for
 9 her?
 10 **A. Sometimes, yeah.**
 11 **Q.** But she was also talking too?
 12 **A. Yes.**
 13 **Q.** And you were completing each other's
 14 sentences like married --
 15 **A. Yes.**
 16 **Q.** -- like married people do?
 17 **A. Uh-huh.**
 18 **Q.** As you're sitting in this interview
 19 together, the two of you are sort of responding at
 20 the same time?
 21 **A. Yes.**
 22 **Q.** Now, the detective asked you -- wanted to
 23 know what happened?
 24 **A. Uh-huh.**
 25 **Q.** So she asked you, hey, could somebody

1 have spiked the water? Do you remember that?
 2 **A. Yeah. I think so.**
 3 **Q.** And you said, it's possible?
 4 **A. It's possible.**
 5 **Q.** And to this day, you don't know; right?
 6 **A. No.**
 7 **Q.** But the very, very first thing that came
 8 to your mind immediately on the night of the
 9 accident was the wood?
 10 **A. Yes.**
 11 **Q.** And you said, I think it was the wood?
 12 **A. That's what I said then. Yes.**
 13 **Q.** You said it then; correct?
 14 **A. Oh, yeah.**
 15 **Q.** And you said it without hesitation?
 16 **A. Yeah.**
 17 **Q.** And you said it -- you gave a whole
 18 explanation?
 19 **A. Yes, I did.**
 20 **MR. LI:** I'd ask to play Exhibit 630.
 21 **MS. POLK:** Your Honor, this witness -- this
 22 would be improper. This witness is agreeing that
 23 this is what he said.
 24 **MR. LI:** I think it's important for the jury
 25 to hear how he sounds when he is saying it on the

1 night of the accident.

2 THE COURT: Overruled.

3 You may play that.

4 MR. LI: Thank you.

5 (Exhibit 630 played.)

6 Q. BY MR. LI: There was another woman in
7 there that you heard every now and then saying
8 things. That was your wife; right?

9 A. **I assume so.**

10 Q. There was the detective, who was asking
11 you questions?

12 A. **Uh-huh.**

13 Q. And then every now and then, somebody
14 would pipe up and you could kind of hear a muffled
15 voice?

16 A. **She had an oxygen mask.**

17 Q. And she's the one who said -- for
18 instance, when you said, Michael's last name is
19 Hamilton, she is the one that said, that's not his
20 real name.

21 You said, that's his legal name now?

22 A. **Yeah.**

23 Q. So that's your wife talking?

24 A. **That's my wife.**

25 Q. And you are not guessing. You know that

1 that's your wife?

2 A. **Yes.**

3 Q. This interview takes place six or so
4 hours, give or take, after the accident?

5 A. **I would say.**

6 Q. And this interview lasts about 24
7 minutes?

8 A. **Okay.**

9 Q. And the detective asks you, what's
10 different today with the previous two with James
11 Ray?

12 And the very first thing you say is?

13 A. **The wood.**

14 Q. The wood.

15 A. **Yeah.**

16 Q. And you did not tell the detectives --
17 because I showed you the transcript. You did not
18 tell the detectives that you thought '09 was hotter
19 than the other James Ray lodges; correct?

20 A. **No. I didn't tell them that. No.**

21 Q. You did not tell them that?

22 A. **No.**

23 Q. You also have today told all of us you
24 have no idea what temperature all the other sweat
25 lodges that you've assisted in -- you have no idea

1 what the temperatures are?

2 A. **No. I have no idea.**

3 MR. LI: Would this be a good time?

4 THE COURT: Yes. Thank you.

5 Ladies and gentlemen, we will take the
6 morning recess at this time. Remember the
7 admonition in all respects.

8 Mr. Mercer, remember the rule of
9 exclusion. I discussed it with you a couple of
10 times. You are excused.

11 We are in recess. Thank you.

12 (Recess.)

13 THE COURT: The record will show the presence
14 of the defendant, Mr. Ray; the attorneys, the jury.
15 The witness is on the stand.

16 Mr. Li.

17 MR. LI: Thank you, Your Honor.

18 Q. Now, Mr. Mercer, we've looked at a lot of
19 pictures from '08 which looked very similar to '07?

20 A. **That's correct.**

21 Q. And you'd agree with me that '09 was
22 tragically different?

23 A. **Somewhat. Yes.**

24 Q. Well, there were two people passed away?

25 A. **Yeah. But the scene was, basically, the**

1 **same.**

2 Q. But there were two people who passed
3 away?

4 A. **That's correct.**

5 Q. And one person passed away later?

6 A. **That's correct.**

7 Q. Now, when you were at the hospital, the
8 detectives were asking you what was different?

9 A. **Uh-huh.**

10 Q. And you were asked by Detective
11 Edgerton -- you know -- this is really weird.

12 What's different? And she asked you, other than
13 the heat, was it hotter? Remember that?

14 A. **I don't remember if she asked me about
15 the heat in particular. But she could have.**

16 Q. And you told her immediately, I don't
17 think it was any hotter than usual either?

18 A. **Uh-huh. Okay.**

19 Q. You told them that immediately?

20 A. **Okay.**

21 MR. LI: Your Honor, I'd like to play
22 Exhibit 630.

23 THE COURT: Ms. Polk?

24 MS. POLK: Again, Your Honor, this is hearsay.

25 MR. LI: It's important for the jury to hear

1 how quick he responds.

2 THE COURT: Mr. Li. Just one second.

3 MS. POLK: Your Honor, the state has no
4 objection. Mr. Li can play the tape.

5 THE COURT: I don't think it's hearsay, in any
6 event. It will be played.

7 MS. POLK: May I have a page reference?

8 MR. LI: Page 15. Sorry. Page 14, line 27
9 through 15, line 11.

10 (Exhibit 630 played.)

11 Q. BY MR. LI: So they asked you whether or
12 not it was any different? Same blankets? Same
13 et cetera? Right?

14 A. Yes.

15 Q. And you said that it was the same
16 everything?

17 A. Yes.

18 Q. And we'll get to that in a second.

19 A. Okay.

20 Q. And then they asked you, except for maybe
21 the heat?

22 A. Uh-huh.

23 Q. And you said, I don't think it was hotter
24 than usual either?

25 A. But as you pointed out, I have no idea

1 how hot it is in there.

2 Q. There you go. So you have no idea what
3 temperature it is inside the sweat lodge?

4 A. No, I do not.

5 Q. Now, you, like the detectives, on the
6 night of October 8 were searching for what it was
7 that killed these folks --

8 A. Yeah.

9 Q. -- because it was such a surprise to
10 everybody, to you, that these folks died in the
11 sweat lodge?

12 A. I wouldn't say it was a surprise but --

13 Q. Let me rephrase it. You were searching
14 for a reason?

15 A. Yes.

16 Q. And so were the detectives?

17 A. Yes.

18 Q. And the first thing that came to your
19 mind on that night was the wood?

20 A. Was the wood because that's the only
21 thing that was different.

22 Q. Okay. Now, I told you I'd come back to
23 this thing, and I promised you, and I will.

24 So let's talk about what was different.

25 A. Okay.

1 Q. So at the end of October -- I'm sorry.

2 At the end of 2008, you stopped working for Angel
3 Valley as an employee?

4 A. That's correct.

5 Q. You helped assemble a sweat lodge
6 probably about five months later in May of '09?

7 A. That's correct.

8 Q. And then you helped assemble another
9 sweat lodge for James Ray International in October
10 '09?

11 A. That's right.

12 Q. And yesterday I was reminded by my
13 colleagues that there are 365 days in the year, and
14 I kept on saying, for the other 270 days. What I
15 meant by that was from January to October, which is
16 about 270 days.

17 So, my colleagues, while I thank them for
18 that, that's what I mean.

19 So for those 270 days, you were not
20 working for Angel Valley?

21 A. I was not working for Angel Valley.

22 Q. Let's talk for a second about the frame.
23 Okay?

24 A. Okay.

25 Q. Your testimony is that the frame is

1 different -- was different in 2009 from the 2007?

2 A. That's correct.

3 Q. But it's the same for the 2008?

4 A. Yes.

5 Q. So I'm going to make, like, a "not
6 equal." And that will mean "not the same." Okay?

7 A. Okay.

8 Q. Not the same as 2007.

9 A. Okay.

10 Q. Is that fair?

11 A. Yes.

12 Q. And then we talked about the tarps and
13 blankets. All right?

14 A. Yes.

15 Q. You've already testified that every
16 tarp -- all the blue tarps look like every other
17 blue tarp?

18 A. That's correct.

19 Q. And we saw a picture up there, did we
20 not, with blue tarps all over the place, on top of
21 wood and what have you?

22 A. Yes.

23 Q. They used blue tarps everywhere in Angel
24 Valley?

25 A. Yes.

- 1 Q. And they used gray tarps all over in
2 Angel Valley; correct?
3 A. Yes.
4 Q. And there was no reason to use one tarp
5 versus another anywhere?
6 A. Tarp is a tarp.
7 Q. Tarp is a tarp. So when you went into
8 the storeroom in October of 2009 to get the blue
9 tarps to put on the sweat lodge, you can't tell the
10 jury, can you, that these are the same tarps that
11 were used in any other sweat lodge?
12 A. No. I guess I couldn't.
13 Q. You would be guessing?
14 A. Yes.
15 Q. Well, you would be. They're not
16 inventoried, are they?
17 A. You're correct. Yes.
18 Q. Now, with respect to the blankets, I'm
19 going to take the tarps here. Tarps. Big question
20 mark. Don't know.
21 A. Okay.
22 Q. Is that fair?
23 A. Yeah.
24 Q. Don't know?
25 A. Don't know.

- 1 Q. Now, some of the blankets you said you
2 could recognize; right?
3 A. Yes.
4 Q. But then some of the blankets you said
5 you could not recognize?
6 A. That's correct.
7 Q. So at least for some of the blankets, you
8 don't know if they're the same?
9 A. Yes.
10 Q. I don't want to misrepresent this, so I'm
11 going to write "some" and a big question mark.
12 Right?
13 A. Yes.
14 Q. Is that fair?
15 A. That's fair.
16 Q. The other thing you told us is you have
17 no idea how they were stored for the other 270 days
18 of the year?
19 A. Well, no.
20 Q. Let me rephrase. You have no personal
21 knowledge?
22 A. No personal knowledge.
23 Q. You did not lay your eyes on them?
24 A. No, I did not.
25 Q. You have no personal knowledge whether

- 1 these tarps were stored in one way or another,
2 whether they were used for other purposes or any of
3 that?
4 A. No. The only thing that I know is they
5 were in the same spot when I went to get them.
6 Q. Did you take a photograph of them when
7 you walked in there?
8 A. No.
9 Q. You don't know. You're guessing?
10 A. Yeah.
11 Q. You're guessing?
12 A. Yeah. I'm guessing.
13 Q. Now, the stones -- we'll come back to the
14 tarps in a second. The stones we know for a
15 fact -- right? -- because you testified that they
16 are not the same as 2007 or 2008?
17 A. No. They are not.
18 Q. Because you never use them again?
19 A. No.
20 Q. Right?
21 A. That's correct.
22 Q. Now, with the wood there is a couple
23 points I want to ask you. I believe Ms. Polk asked
24 you if the wood was the same. And you might have
25 said yes for some of the ceremony?

- 1 A. Yes.
2 Q. Let me ask you this question: When you
3 heat up the rocks, you use the wood?
4 A. Yes.
5 Q. And you burn them; right?
6 A. Yes.
7 Q. What happens to the wood when you burn
8 it?
9 A. It turns to ash.
10 Q. Right. You really can't use that log
11 again, can you?
12 A. Not that exact same log. No.
13 Q. Right. Because it's turned to ash?
14 A. Right.
15 Q. Automatically, no matter what, you are
16 not using the same wood; correct?
17 A. Not using the same wood. But it came
18 from the same area.
19 Q. Understand. I'm going to go little by
20 little here.
21 A. Okay.
22 Q. You got a log here. They are not the
23 same pieces of wood?
24 A. No. Because they burned up.
25 Q. That's another not equals?

1 **A. Okay.**
 2 **Q.** Now, you say they're the same types of
 3 wood or some of it; right?
 4 **A. That's right.**
 5 **Q.** That in 2009, when you said, I think it
 6 was the wood --
 7 **A. Uh-huh.**
 8 **Q.** -- the reason why you said that was
 9 because you used only construction wood --
 10 **A. That's correct.**
 11 **Q.** -- to heat up the logs -- the rocks;
 12 correct?
 13 **A. Yes.**
 14 **Q.** And earlier you had used some mixture?
 15 **A. That's correct.**
 16 **Q.** So even the types are not exactly the
 17 same, are they?
 18 **A. No, they're not.**
 19 **Q.** So the type was not equal; correct?
 20 **A. That's correct.**
 21 **Q.** And in 2007 and 2008 and other years, you
 22 used mostly tree wood or all tree wood?
 23 **A. That's right.**
 24 **Q.** Now, do you have any idea how this wood
 25 was treated?

1 **A. No.**
 2 **Q.** You have no idea at all?
 3 **A. No idea.**
 4 **Q.** So you don't know one way or another
 5 whether it was lacquered; correct?
 6 **A. That's right.**
 7 MS. POLK: Objection, Your Honor.
 8 **Q.** BY MR. LI: You have no way of knowing
 9 whether it was pressure treated?
 10 MS. POLK: I'm sorry. Objection.
 11 THE COURT: Ms. Polk.
 12 MS. POLK: Mr. Li's questions are assuming
 13 facts not in evidence. Rather than asking if the
 14 witness knows if the wood was treated, he's
 15 assuming the wood was treated with his questions.
 16 And that is not in evidence.
 17 THE COURT: Overruled. Overruled.
 18 **Q.** BY MR. LI: You don't know one way or
 19 another whether it was pressure treated, do you?
 20 **A. I have no idea.**
 21 **Q.** You don't know one way or another whether
 22 it was oil stained or anything like that?
 23 **A. No.**
 24 **Q.** You have no idea one way or another
 25 whether any of the wood you burned for the 2009

1 James Ray International sweat lodge had been
 2 treated in any way at all?
 3 **A. No. I wouldn't know.**
 4 **Q.** But you did say to the detectives on the
 5 night of the accident, I think it was the wood?
 6 **A. That is the only thing that was**
 7 **different, and I was still kind of panicky.**
 8 **Q.** Okay. Now, another component of the
 9 sweat lodge is the land that it sits on?
 10 **A. Right.**
 11 **Q.** And the land is that cleared space that
 12 we looked at; right?
 13 **A. Uh-huh.**
 14 **Q.** And you have no idea how that land is
 15 maintained during 2007 or 2009; correct?
 16 **A. Not during 2009.**
 17 **Q.** So in 2009 you don't know what the
 18 landscapers did on that land, do you?
 19 **A. No.**
 20 **Q.** And you don't know what the Hamiltons did
 21 on that land, do you?
 22 **A. No.**
 23 **Q.** And you don't know what Rotillo
 24 Vasquez -- is it Vasquez or Velasquez?
 25 **A. I don't remember his last name.**

1 **Q.** Rotillo?
 2 **A. Yeah. Rotillo.**
 3 **Q.** What Rotillo did on the land?
 4 **A. No.**
 5 **Q.** You have no idea what any of the
 6 volunteers did on the land?
 7 **A. No. I would see them doing things around**
 8 **while I was walking around the property once in a**
 9 **while. No. I don't know exactly what they were**
 10 **doing.**
 11 **Q.** So you have no personal knowledge
 12 whatsoever whether the land under the sweat lodge,
 13 the dirt under the sweat lodge, in October 2009 is
 14 the same dirt or is in the same condition as the
 15 dirt under the sweat lodges in any other year at
 16 any other time?
 17 **A. No. But I would assume that it was.**
 18 **Q.** You would assume it, which would be a
 19 guess?
 20 **A. That's right.**
 21 **Q.** Remember that whole "when you assume"?
 22 **A. Yes.**
 23 **Q.** That would just be a guess?
 24 **A. Yes.**
 25 **Q.** You're not going to guess for this jury,

1 are you?

2 **A. No. I don't want to guess for them. But**
3 **I do want to give them a full answer.**

4 **Q.** That's fair. But we don't rely on a
5 guess, do we?

6 **A. No.**

7 **Q.** So for all you know, the land is not the
8 same; correct? The condition of the land is not
9 the same?

10 **A. Yes.**

11 **Q.** Fair to say, then, for all you know, the
12 condition of the land is not the same; right?

13 **A. Yes.**

14 **Q.** Fair to say that the wood and its
15 condition and whether it was treated or not treated
16 is not the same?

17 **A. That's true.**

18 **Q.** Fair to say that the stones are not the
19 same?

20 **A. Yes.**

21 **Q.** Fair to say that some of the blankets --
22 you have no idea whether some of the blankets are
23 the same or not the same; correct?

24 **A. Yes. A few. Yes.**

25 **Q.** And fair to say that you have no idea

1 whether any of the blue tarps or gray tarps are the
2 same; correct?

3 **A. That's correct.**

4 **Q.** I'm not going to cross this out. I'm
5 going to give it a half cross. Is that fair?

6 **A. That's great.**

7 **Q.** Also fair to say that the frame, the
8 kiva, is not the same in 2007?

9 **A. No. It's not.**

10 **Q.** I'm going to give that also a half cross.
11 Is anything about what I've done here
12 inaccurate or unfair?

13 **A. No.**

14 **Q.** One last thing. This I forgot. Rat
15 poison.

16 **A. Rat poison.**

17 **Q.** You told the detectives, did you not --
18 actually, you told Detective Diskin on October 9
19 that there was rat poison in the pump house?

20 **A. Yes, I did.**

21 **Q.** And you have no idea whether or not --
22 you have no personal knowledge whether or not
23 in 2009 somebody put rat poison inside the tarps?

24 **A. No.**

25 **Q.** You have no personal knowledge; correct?

1 **A. No.**

2 **Q.** And you have no personal knowledge as to
3 whether they sprayed any of the tarps or blankets
4 or anything with any kind of insecticide?

5 **A. No.**

6 **Q.** I'm going to write here --

7 **A. Could I add to that question?**

8 **Q.** You may in a second. Go ahead.

9 **A. I do know the policy was that there was**
10 **no pesticide on the property when I was working**
11 **there.**

12 **Q.** And that policy was told to you -- the
13 policy was told to you by Michael Hamilton maybe?

14 **A. Michael and Amayra.**

15 **Q.** Would it surprise you that Mr. Hamilton
16 actually bought all kinds of rat poison for the
17 property?

18 **MS. POLK:** Your Honor, objection. That
19 misstates -- it's not evidence, and it misstates.

20 **THE COURT:** Sustained as to form.

21 **Q.** BY MR. LI: Let me rephrase it. Do you
22 know one way or another whether Michael Hamilton
23 actually bought rat poison, different types, for
24 use at Angel Valley?

25 **A. No, I wouldn't.**

1 **Q.** Would you know one way or another whether
2 Fawn Foster used ant poison at Angel Valley?

3 **A. I wouldn't know.**

4 **Q.** And would you know one way or another
5 whether Fawn Foster used rat poisoning in various
6 places at Angel Valley?

7 **A. No, I wouldn't.**

8 **Q.** So is it fair to say even though you've
9 helped us -- and I appreciate you clarifying that.
10 You understand there was some policy. Okay?

11 **A. Yes.**

12 **Q.** But is it fair to say you don't know
13 whether there was poison with the tarps and
14 blankets?

15 **A. That's correct.**

16 **Q.** With respect to the land -- and we'll
17 come back to this in a bit. You don't -- the same
18 is true for that, too; right? You don't know one
19 way or another whether to get rid of the fire ants
20 or for whatever somebody poured some ant poison on
21 the ground, do you?

22 **A. No.**

23 **Q.** Is it fair for me to say you don't know?
24 Poison. Don't know?

25 **A. I wouldn't know. No. But as far as the**

1 **policy went, that's all I know.**

2 **Q.** I understand. And I appreciate you
3 telling us about the policy.

4 Let's talk for a second, if we could,
5 about the rat poison you saw. Okay?

6 **A. Okay.**

7 **Q.** We understand there is a policy against
8 chemical bleach and all that?

9 **A. Uh-huh.**

10 **Q.** But you did see something that you
11 believed was rat poison?

12 **A. That's what I thought it was.**

13 **Q.** And you saw it in the pump house;
14 correct?

15 **A. Yes.**

16 **Q.** And you saw chunks of it; correct?

17 **A. Yes.**

18 MR. LI: If I could have Exhibit 797.

19 **Q.** This is the pump house; right?

20 **A. That's the pump house in a condition I've**
21 **never seen it before.**

22 **Q.** Usually it's a mess?

23 **A. Yes.**

24 **Q.** This has been cleaned up a lot?

25 **A. Yes.**

1 **Q.** Usually there is stuff everywhere?

2 **A. That's correct.**

3 **Q.** This picture of the pump house almost
4 looks like a cleaner went through it and tidied it
5 up?

6 **A. Very much so.**

7 **Q.** Because you've seen the pump house when
8 you were the manager, the property manager; right?

9 **A. Yes.**

10 **Q.** And it was filled with things, not just
11 sweat lodge material, but all kinds of things;
12 right?

13 **A. There was a few other things in there.**

14 **Q.** What other things were in there?

15 **A. There was, like, those yellow scaffolding**
16 **was in there and a couple pieces of wood. And**
17 **things would come and go once in a while too.**

18 **Q.** Fair to say you have never, ever, ever
19 seen the pump house in this condition?

20 **A. Never, ever. No.**

21 **Q.** So whoever took this picture probably
22 took it after they cleaned up?

23 **A. That's true.**

24 **Q.** If you can show for the jury where in the
25 pump house the stuff you thought was rat poison was

1 located.

2 **A. It was over here by the wall. Because**
3 **there was a little hole where that electric line**
4 **came in. And on the other side there was another**
5 **hole. And that's where I saw it on the ground.**

6 **Q.** Did you see it anywhere else?

7 **A. It might have been a little under the**
8 **table too. I'm not sure.**

9 **Q.** And the table was in the back here?

10 **A. Yes.**

11 **Q.** Can you point it out for us.

12 **A. That's the table right here with the**
13 **stuff on it.**

14 **Q.** And this is where you had said earlier
15 all the blankets were piled maybe to about that
16 high?

17 **A. Yes. We made sure we had the blankets**
18 **off the ground.**

19 **Q.** Okay. And then you said the tarps were
20 somewhere around here?

21 **A. On both sides. Yeah.**

22 **Q.** Okay. What did the poison look like?

23 **A. As far as I can recall right now, it was,**
24 **like, granules, like, larger chunks of sand.**

25 **Q.** Maybe --

1 **A. Little smaller than that.**

2 **Q.** Half an inch?

3 **A. Eighth of an inch at the biggest.**

4 **Q.** And what color was it?

5 **A. Blue and white, as far as I remember.**

6 **Q.** Now, was the poison ever placed on a sort
7 of a nice-looking dinner plate in front of the
8 pumps?

9 **A. No. It was on the ground.**

10 **Q.** So it's never been on a nice little
11 dinner plate sitting in front of the pumps?

12 **A. Not as far as I saw.**

13 **Q.** Has it ever -- did the poison you see --
14 was it big, yellow chunks, like, this big?

15 **A. No. It was a few granules kind of spread**
16 **around. Looked like it had been there a while.**

17 **Q.** If you saw a photograph of this pump
18 house with a plate, like a nice dinner plate with
19 chunks of rat poison sort of stuck on it, that
20 would not be how you saw it; right?

21 **A. No.**

22 **Q.** That would be almost staged; right?

23 **A. I would think so.**

24 **Q.** Because you don't really feed rat poison
25 off a plate, do you?

1 **A. Not normally. I wouldn't.**
 2 **Q.** You stick it where they're going to go?
 3 **A. Yeah.**
 4 **Q.** Now, let's talk about Angel Valley and
 5 the pump house for a second. Are there bugs,
 6 critters, at Angel Valley?
 7 **A. Oh, yeah.**
 8 **Q.** Lots of them?
 9 **A. They're all over.**
 10 **Q.** You're right next to a creek; right?
 11 **A. Uh-huh.**
 12 **Q.** And a creek breed bugs?
 13 **A. Bugs.**
 14 **Q.** Rats?
 15 **A. Sure.**
 16 **Q.** What else? Scorpions?
 17 **A. Mice, scorpions. Coyotes come around.**
 18 **Q.** Let me ask you a question. Let's talk
 19 about -- do they have black widows?
 20 **A. Sure.**
 21 **Q.** At Angel Valley?
 22 **A. Yes.**
 23 **Q.** Those are dangerous?
 24 **A. You bet. Get a bite, you get a big sore.**
 25 **Q.** Let me ask you this: If you're going to

1 reach into a pump house and grab a bunch of
 2 blankets that have been sitting there for half a
 3 year, do you ever worry when you stick your hand in
 4 there something is going to nip you?
 5 **A. No.**
 6 **Q.** Really?
 7 **A. Yeah.**
 8 **Q.** Because you're just not concerned about
 9 that?
 10 **A. Yeah. And -- you know -- I've dealt with**
 11 **that kind of stuff before. I mean, I've been bit**
 12 **by a black widow. Didn't harm me that much.**
 13 **Q.** Okay. Well, fair to say it's not
 14 something that people encourage getting bitten by a
 15 black widow?
 16 **A. No. I wouldn't want to.**
 17 **Q.** Fair to say that you don't really want to
 18 have a black widow colony living in your blankets?
 19 **A. No.**
 20 **Q.** Fair to say that you don't want scorpions
 21 crawling around when you reach into them?
 22 **A. Yes.**
 23 **Q.** Is it possible that somebody thinks to
 24 themselves I don't want a black widow colony in any
 25 of these blankets or tarps?

1 **A. I suppose it's possible.**
 2 **Q.** Is it possible that somebody says, I'm
 3 going to go to Home Depot and kill any scorpion,
 4 black widow, whatever? Is that possible?
 5 **A. Without Michael's okay first, I would**
 6 **highly doubt that.**
 7 **Q.** But let's say for a second, is it
 8 possible?
 9 **A. It is possible.**
 10 **Q.** Is it possible that somebody would on
 11 their initiative, or even Michael -- you know -- on
 12 his initiative decide to kill the bugs that are all
 13 over Angel Valley?
 14 **A. No. I wouldn't think it would be**
 15 **possible to try to kill all the bugs.**
 16 **Q.** Good point. Let me rephrase that. Kill
 17 all the bugs in places that you might not want to
 18 have all the bugs?
 19 **A. That could be. Yes.**
 20 **Q.** Thank you for that correction.
 21 How many people work for Angel Valley or
 22 volunteered for Angel Valley in 2009?
 23 **A. I don't know.**
 24 **Q.** How many people worked there when you
 25 were there?

1 **A. When I was there, it varied between five**
 2 **and seven.**
 3 **Q.** So five or seven people when you were
 4 there. You don't know how many people were there
 5 after you left?
 6 **A. Yeah.**
 7 **Q.** Was Rotillo there still?
 8 **A. You know, Rotillo wasn't there for a**
 9 **while, but then I heard he came back.**
 10 **Q.** Let's talk for a second about the sweat
 11 lodge --
 12 **A. Okay.**
 13 **Q.** -- the 2009 sweat lodge.
 14 If we could have Exhibit 141 up on the
 15 screen, please, which is in evidence.
 16 Now, this is a sort of far away view of
 17 Angel Valley?
 18 **A. That's correct.**
 19 **Q.** Taken from up on the road maybe?
 20 **A. Looks like it.**
 21 **Q.** And this space here is sort of the
 22 organic garden?
 23 **A. Yeah. Okay.**
 24 **Q.** Is that right?
 25 **A. That's right. Right there.**

- 1 Q. I guess you can't see --
- 2 A. **This whole area is a garden.**
- 3 Q. Let's just zoom in on this little spot
- 4 there. That's a pile of wood; right?
- 5 A. **Those are poles for teepees.**
- 6 Q. And you see the tarps all over there?
- 7 A. **Yeah.**
- 8 Q. Now, there is a creek, is there not, in
- 9 Angel Valley?
- 10 A. **Yeah. It surrounds it pretty much.**
- 11 Q. Can you show us on this picture about
- 12 where it is.
- 13 A. **It runs right along this tree line,**
- 14 **probably right in the middle of it. It goes around**
- 15 **and keeps on flowing.**
- 16 Q. You can see that's where the creek is
- 17 because like most places, wherever there is a lot
- 18 of greenery in a dry place, that's most likely
- 19 where you should go fishing; right?
- 20 A. **I would think so. Yeah.**
- 21 MR. LI: If we can zoom in for a second on the
- 22 sweat lodge, which is right there.
- 23 Q. You see that? That's the sweat lodge,
- 24 isn't it?
- 25 A. **Yes, it is.**

- 1 Q. And you can see, can you not, some Dream
- 2 Team people. That might even be you. That might
- 3 be Fawn Foster walking around here.
- 4 A. **Yeah. Who knows.**
- 5 Q. Somebody is walking. You can see some
- 6 folks here in blue T-shirts; right?
- 7 A. **Yes.**
- 8 Q. Those are the Dream Team members; right?
- 9 A. **I don't know.**
- 10 Q. Well, the Dream Team members were wearing
- 11 blue T-shirts?
- 12 A. **Yeah, they were.**
- 13 Q. One thing I want you to notice here is
- 14 you see how close the sweat lodge is to the creek.
- 15 A. **It's not as close as you think it is.**
- 16 Q. Well, how close is it to the creek?
- 17 A. **It's probably 150 yards.**
- 18 Q. 150 yards from the creek?
- 19 A. **Maybe.**
- 20 Q. Really?
- 21 A. **Okay. Hundred yards. It's --**
- 22 Q. Let me show you this little map. You
- 23 know, this is not a test. Just give us your
- 24 best --
- 25 A. **It's not right on the water. I can tell**

- 1 **you that.**
- 2 Q. What do you think?
- 3 A. **Hundred yards or more from the creek.**
- 4 Q. Hundred yards or more?
- 5 A. **Yes.**
- 6 MR. LI: The -- can we zoom in on the sweat
- 7 lodge. If we can include a little bit of the tree
- 8 line.
- 9 Q. Fair to say that sweat lodge is a few
- 10 feet, though, from the brush?
- 11 A. **Yes.**
- 12 Q. And so here we have some brush here;
- 13 right?
- 14 A. **Uh-huh.**
- 15 Q. That's just your regular -- what kind of
- 16 brush is that?
- 17 A. **Looks like a tree.**
- 18 Q. Then you have all these willows; right?
- 19 A. **Yeah, there's willows back there.**
- 20 Q. And those are the things that grow in the
- 21 water; right?
- 22 A. **Yeah.**
- 23 Q. So is this a hundred yards?
- 24 A. **Well, from there to there isn't a hundred**
- 25 **yards. From there to the creek is a hundred yards,**

- 1 **though.**
- 2 Q. Okay.
- 3 A. **I know that area. I know where the creek**
- 4 **is.**
- 5 Q. You know it a lot better than I do. I'll
- 6 stop asking you about it. But it's right next to
- 7 the brush; correct?
- 8 A. **Yes.**
- 9 Q. How big is the sweat lodge?
- 10 A. **About 30, 35 feet across.**
- 11 Q. Could it be 23 feet?
- 12 A. **It could be 23 feet. I never measured**
- 13 **it.**
- 14 MR. LI: If I could have Exhibit 145 up,
- 15 please.
- 16 Q. This is a different view of the sweat
- 17 lodge; right?
- 18 A. **Yes.**
- 19 Q. And that's your wife holding space in
- 20 front of the door; correct?
- 21 A. **That's correct.**
- 22 Q. And this is some of the block wood that
- 23 was being burned in the 2009 ceremony; correct?
- 24 A. **Yes.**
- 25 Q. And this is that same brush line here;

1 correct?
 2 **A. Yes.**
 3 **Q.** Now, these folks out here are Dream Team
 4 members; right?
 5 **A. Yes.**
 6 **Q.** And you are also aware that there were
 7 Dream Team members inside; correct?
 8 **A. Yes.**
 9 **Q.** And they were at each of the four corners
 10 of the sweat lodge?
 11 **A. That's correct.**
 12 **Q.** And you have told us that one of the
 13 people informed you that she was a nurse on the
 14 outside -- one of the Dream Team members?
 15 **A. Yes.**
 16 MR. LI: And if I could have Exhibit 281 and
 17 -- 281 up, please.
 18 **Q.** There were electrolytes and lemon water
 19 and all that kind of stuff on the outside?
 20 **A. Yes.**
 21 MR. LI: And if I could have 282.
 22 **Q.** There was fruit?
 23 **A. That usually comes after the sweat lodge.**
 24 **Q.** And the purpose of that is to help people
 25 rehydrate, get some sugars, get some salts, all

1 that stuff?
 2 **A. Get their energy back.**
 3 **Q.** Get their energy back?
 4 **A. Yep.**
 5 **Q.** In terms of what was going on at the
 6 sweat lodge, you had people on the inside; correct?
 7 **A. Yes.**
 8 **Q.** You had people on the outside; correct?
 9 **A. Yes.**
 10 **Q.** They were all watching what was going on;
 11 correct?
 12 **A. Yes.**
 13 **Q.** You had hoses on the outside to cool
 14 people off?
 15 **A. Yes.**
 16 **Q.** You had tarps for people to sit on?
 17 **A. Yes.**
 18 **Q.** You had recovery station shade; correct?
 19 **A. Yes.**
 20 **Q.** You had fruit?
 21 **A. Yes.**
 22 **Q.** You had electrolytes?
 23 **A. Yes.**
 24 **Q.** You had water?
 25 **A. Yes.**

1 **Q.** You had towels to help people cool off?
 2 **A. Yes.**
 3 **Q.** And you had a nurse, basically, someone
 4 who identified herself as a nurse?
 5 **A. That's correct.**
 6 **Q.** If we could now sort of shift to just the
 7 ceremony itself.
 8 You can look at Exhibit 144, please?
 9 This is -- you recognize her?
 10 **A. That looks like it could be Fawn.**
 11 **Q.** That's Fawn Foster?
 12 **A. Yes.**
 13 **Q.** Now, this is the sweat lodge ceremony
 14 in 2009. And people are entering the sweat lodge;
 15 correct?
 16 **A. That's correct.**
 17 **Q.** When they're going in, nobody is forcing
 18 them in, are they?
 19 **A. No.**
 20 **Q.** In fact, nobody is yelling at them, are
 21 they?
 22 **A. No.**
 23 **Q.** It's not like the army with a drill
 24 sergeant. Get in there, recruit. Nothing like
 25 that?

1 **A. Not at all.**
 2 **Q.** It's encouragement; right?
 3 **A. Yes.**
 4 **Q.** Some people who are participants are
 5 excited?
 6 **A. Yes.**
 7 **Q.** Some people are nervous?
 8 **A. Yes.**
 9 **Q.** And all different kinds of people are
 10 going to have all different kinds of experiences?
 11 **A. Everybody is going to have their own**
 12 **experience.**
 13 **Q.** And that's true of every sweat lodge
 14 you've ever been part of?
 15 **A. Exactly.**
 16 **Q.** Now, there was a very thick covering over
 17 the lodge?
 18 **A. Yes.**
 19 **Q.** Probably about, if you totalled it up,
 20 maybe about that thick?
 21 **A. If I folded it up.**
 22 **Q.** No. Totalled it up. Like, if you took
 23 the whole sweat lodge and took a cross section, how
 24 thick would it be?
 25 **A. About a foot, foot and a half.**

1 Q. Foot and a half. Depending on the place?
 2 A. **Exactly.**
 3 Q. Now, from 25 feet away -- let me rephrase
 4 that.
 5 You were at the fire, which is right
 6 here?
 7 A. **Yes.**
 8 Q. And you were tending it?
 9 A. **Yes.**
 10 Q. So from 25 feet away, you could hear some
 11 things in there, but you couldn't hear everything?
 12 A. **That's right.**
 13 Q. Now, every person who either went into
 14 the lodge or exited the lodge, they had free will
 15 to go in or not go in; correct?
 16 A. **That's correct.**
 17 Q. During the first round three people came
 18 out?
 19 A. **Yeah. That could be.**
 20 Q. Nobody held onto them; right?
 21 A. **No.**
 22 Q. During the second round some more people
 23 came out?
 24 A. **Yeah.**
 25 Q. And they cooled off?

1 A. **Yeah.**
 2 Q. They got sprayed down?
 3 A. **Yes.**
 4 Q. They sat in chairs?
 5 A. **Uh-huh.**
 6 Q. They sat in the tarps?
 7 A. **Yep.**
 8 Q. One question. Did you notice that the
 9 Dream Team members -- when anybody came out of the
 10 lodge, did you notice that the Dream Team members
 11 tried to keep them low, not let them stand up too
 12 fast?
 13 A. **Not that I can recall.**
 14 Q. Okay. But you have no reason to dispute
 15 that the Dream Team members tried to keep people
 16 low when they came out?
 17 A. **No.**
 18 Q. No reason to dispute it?
 19 A. **No. No.**
 20 Q. It makes sense; right? You don't want
 21 them to stand up too fast because they might faint?
 22 A. **That's true.**
 23 MR. LI: If I could have Exhibit 146 up.
 24 Q. And this is another picture of the sweat
 25 lodge with these various Dream Team members. You

1 recognize that?
 2 A. **Yes, I do.**
 3 Q. And this is, basically, what it looked
 4 like in the early rounds; correct?
 5 A. **Yes.**
 6 Q. Peaceful?
 7 A. **Very peaceful.**
 8 Q. And the things that you did hear from
 9 Mr. Ray were encouragement; right?
 10 A. **Yes.**
 11 Q. And you heard people inside issuing their
 12 proclamations?
 13 A. **Yes.**
 14 Q. And those kind of proclamations were
 15 things like, I want to be true to myself, things
 16 like that?
 17 A. **Uh-huh.**
 18 Q. I don't want to lie to myself?
 19 A. **Exactly.**
 20 Q. I want to be a better father?
 21 A. **Yeah.**
 22 Q. And you would hear Mr. Ray singing
 23 prayers and chants; right?
 24 A. **Yes.**
 25 Q. And there might be some Hebrew in it?

1 There might be some Native American? There might
 2 be any kinds of languages going on in there; right?
 3 A. **That could be. Yes.**
 4 Q. It was a very eclectic experience?
 5 A. **Yes.**
 6 Q. So you may have heard actual prayers;
 7 correct?
 8 A. **Yes.**
 9 Q. And that was the way it always was in
 10 every single sweat lodge ceremony that Mr. Ray did;
 11 correct?
 12 A. **That's correct.**
 13 Q. Now, you said that he encouraged people
 14 to come back in?
 15 A. **Yes.**
 16 Q. And on direct you said, here's what he
 17 said: Anybody wants to come in, come on in?
 18 A. **Door is open.**
 19 Q. Door is open.
 20 A. **Let's come in if you want.**
 21 Q. Okay. He didn't yell at people, did he?
 22 A. **No. He didn't yell. But his voice was**
 23 **loud so everybody could hear him.**
 24 Q. But it wasn't like --
 25 A. **You get back in here. No.**

1 Q. He was encouraging?
 2 A. **Yes.**
 3 Q. In the fifth round somebody came out and
 4 said that he was having a heart attack or that he
 5 didn't want to die?
 6 A. **That's right.**
 7 Q. Do you know if the guy's name was Dennis?
 8 A. **I don't know.**
 9 Q. Did you hear -- and you said you heard
 10 something from inside -- strike that.
 11 What happens is this guy comes out. He
 12 says, I'm dying. I'm dying. Right?
 13 A. **Yes.**
 14 Q. I'm having a heart attack?
 15 A. **I don't want to die.**
 16 Q. I don't want to die. And Dream Team
 17 people come over to him?
 18 A. **Yes.**
 19 Q. They sit him down?
 20 A. **Uh-huh. He was already laying on the**
 21 **ground.**
 22 Q. So he's laying on the ground. And you
 23 don't know what they're saying, but they're trying
 24 to calm him down?
 25 A. **That's right.**

1 Q. And then you hear something from the
 2 tent?
 3 A. **Uh-huh.**
 4 Q. And it's Mr. Ray?
 5 A. **That's right.**
 6 Q. And he says, what's going on out there?
 7 A. **Yeah. Who is that?**
 8 Q. Because they're in the middle of the
 9 ceremony?
 10 A. **Yeah. The door was shut.**
 11 Q. And he says, who is that?
 12 A. **Uh-huh.**
 13 Q. They say whatever they say. Maybe it's
 14 Dennis?
 15 A. **Uh-huh.**
 16 Q. Okay. And Mr. Ray says what? Calm down,
 17 Dennis. You're going to be okay?
 18 A. **Yeah. You're not going to die.**
 19 Q. You're not going to die.
 20 A. **You will be all right.**
 21 Q. You will be fine?
 22 A. **Uh-huh.**
 23 Q. In fact, he then calmed down?
 24 A. **Yeah. After a little bit he did.**
 25 Q. Let me go back to the rat poison for a

1 second. Any rat poison that was used there was not
 2 your decision; is that right?
 3 A. **That's correct.**
 4 Q. And any rat poison that was used there
 5 was not Mr. Ray's decision, was it?
 6 A. **No.**
 7 Q. It certainly wasn't James Ray
 8 International's decision, was it?
 9 A. **I wouldn't think so.**
 10 Q. It wasn't Debbie Mercer's decision, was
 11 it?
 12 A. **No.**
 13 Q. Any rat poison that would be used there
 14 would either be the decision of the person that put
 15 it there or Michael and Amayra Hamilton?
 16 A. **Yes.**
 17 Q. On October 8 you told Detective Edgerton
 18 about the wood?
 19 A. **Yes.**
 20 Q. And then on October 9 when
 21 Detective Diskin came out, you had another
 22 conversation with him about what might have
 23 happened?
 24 A. **Yes.**
 25 Q. And one of the things you mentioned was

1 the wood. And we'll get to that.
 2 A. **Uh-huh.**
 3 Q. He also asked you whether there was
 4 anything else.
 5 And you said, well, there was rat poison
 6 in the pump house?
 7 A. **Uh-huh.**
 8 Q. And, for the record, you're going to have
 9 to say yes.
 10 A. **Oh. Yes. Sorry.**
 11 Q. You told Detective Diskin that you saw
 12 chunks of rat poisoning -- you know -- in the pump
 13 house with the tarps?
 14 A. **Yes. May I add to that answer?**
 15 Q. Yeah.
 16 A. **I had seen that same rat poison the whole**
 17 **time I had worked at Angel Valley.**
 18 Q. I understand. You told Detective Diskin
 19 about the rat poison on October 9, the day after
 20 the accident. And he told you, we'll check with
 21 the medical examiner when he does his work on the
 22 victims and see what he can determine.
 23 Do you recall that?
 24 A. **Yeah.**
 25 Q. You recall him telling you --

1 **A. If it's in the transcript. I don't**
2 **really recall it word for word right now.**

3 **Q.** I'm going to -- would it help you to look
4 at the transcript?

5 **A. Sure.**

6 **Q.** Exhibit 681 at page 9, line 22 and 23.

7 MS. POLK: Your Honor, the state would request
8 under Rule 106 that Mr. Li direct the witness's
9 attention to that page 9 from lines 5 through line
10 24.

11 MR. LI: All we're asking is whether Detective
12 Diskin told Mr. Mercer that they would check with
13 the medical examiners.

14 THE WITNESS: And that's what it says.

15 THE COURT: Ms. Polk, you may add the entire
16 passage on redirect if it needs to be put in
17 context.

18 Continue, Mr. Li.

19 MR. LI: Thank you.

20 **Q.** So you did -- Detective Diskin did tell
21 you, but -- you know -- we'll check with the
22 medical examiner when he does his work on the
23 victims and see what he can determine?

24 **A. Yes.**

25 **Q.** So after you told Detective Diskin about

1 the rat poison, he said he would check with the
2 medical examiners?

3 **A. That's what it says.**

4 **Q.** Do you know if Detective Diskin ever did
5 check with the medical examiners?

6 **A. I would have no idea.**

7 **Q.** Would it surprise you if he didn't?

8 **A. Well, I don't know. I don't know the**
9 **guy. I don't know how he is or how he would react**
10 **or how he would do things. I wouldn't know. I**
11 **can't answer that question.**

12 MR. LI: Let's take a look at 141. Can we
13 have 141?

14 **Q.** This is the long view of the sweat lodge
15 area; right?

16 **A. Yep.**

17 **Q.** You can see how clear it is around the
18 sweat lodge?

19 **A. Yes.**

20 **Q.** And there are weeds everywhere?

21 **A. Weeds everywhere.**

22 **Q.** And plants everywhere?

23 **A. Yeah.**

24 **Q.** Okay.

25 And if we could look at Exhibit 145.

1 Again, you're right next to the brush
2 line here?

3 **A. Uh-huh.**

4 **Q.** And this whole area here there aren't
5 weeds or anything?

6 **A. No.**

7 MR. LI: And if we could look at 146, please.

8 **Q.** Same thing. Completely clear?

9 **A. Yes. But can I add to the answer?**

10 **Q.** Absolutely. And we'll get there in a
11 second step by step. Okay?

12 **A. All right.**

13 **Q.** You don't see it -- you don't -- you
14 testified earlier there was a lot of weeding going
15 on there?

16 **A. Yeah.**

17 **Q.** Now, did folks ever spray anything on the
18 ground?

19 **A. Not as far as I know.**

20 **Q.** Okay. So as far as you know, the
21 Hamiltons have never sprayed anything on the
22 ground?

23 **A. That's policy.**

24 **Q.** So their policy is never, ever, ever to
25 spray anything on the ground?

1 **A. That's correct.**

2 **Q.** And that's because Michael Hamilton
3 himself told you that was his policy?

4 **A. I'm not sure if it came right from his**
5 **mouth or if it came from Gary or if I heard it from**
6 **Amayra or who I actually heard it from. But I know**
7 **I've heard it several times.**

8 **Q.** So it's the Angel Valley policy that
9 nobody can spray anything on the ground?

10 **A. That's correct.**

11 **Q.** All right. If we could take a look at
12 exhibit -- before we do that --

13 So you have all the brush over here, and
14 critters live in the brush?

15 **A. Uh-huh.**

16 **Q.** You know, because you lived here for a
17 while, there are ants all over the place?

18 **A. Sure.**

19 **Q.** Fire ants?

20 **A. Yeah. Fire ants.**

21 **Q.** They have little holes in the ground?

22 **A. Uh-huh. Little red ones.**

23 **Q.** Little red ones and little black ones?

24 **A. Uh-huh.**

25 **Q.** And they bite?

1 **A. Yeah.**

2 **Q.** And it hurts?

3 **A. Yeah.**

4 **Q.** The thing about fire ants is there is a
5 lot of them. And you can -- it's not like you get
6 bit once. If you're sitting on an ant hill, a lot
7 of them bite you?

8 **A. That's correct.**

9 **Q.** And there are other bugs in the creek and
10 around Angel Valley, what have you?

11 **A. Uh-huh.**

12 MR. LI: Let's take a look at Exhibit 490.

13 You know what. If we could take that
14 down. I don't believe I moved that into evidence.

15 Your Honor, I'm showing counsel exhibits
16 490, 502, 504, and 507.

17 MS. POLK: Your Honor, the state would
18 stipulate to the admission of these exhibits.

19 THE COURT: Exhibits 490, 502, 504 and 507 are
20 admitted.

21 (Exhibits 490, 502, 504 and 507
22 admitted.)

23 MR. LI: If we could publish Exhibit 490.

24 **Q.** This is the day after the accident.
25 There is a bunch of trash on the ground?

1 **A. Looks like trash.**

2 **Q.** You got a pizza box?

3 **A. Uh-huh.**

4 **Q.** You got some sugar drinks, energy drinks,
5 and what have you?

6 **A. Yeah.**

7 **Q.** I looked really, really carefully at this
8 picture. And I'm going to hand it up to you. This
9 is over 24 hours after the accident. And I could
10 not find an ant anywhere on it.

11 **A. I don't see any ants. Is there actually
12 food inside the boxes?**

13 **Q.** Don't know.

14 If we could have Exhibit 502 up.

15 This is a trash can with Dr. Pepper, some
16 coffee cups, all kinds of other things. I looked
17 really hard at it too, and I could not find an ant.
18 Can you find an ant on there?

19 **A. I don't see any ants.**

20 **Q.** This is a day after. This stuff has been
21 sitting in the sun for a day.

22 **A. Okay.**

23 **Q.** I'm going to ask you to look at 504.
24 This is the day after again. These are lemon
25 water, electrolytes, sugar water, basically, and

1 all these cups with orange peels and oranges, and
2 what have you, cups with sugar in them.

3 Again, I spent a lot of time looking at
4 this one, and I could not find a single ant or any
5 bug?

6 **A. I don't see any ants or bugs either.**

7 MR. LI: And if we could have Exhibit 507 up.

8 **Q.** This is the day after. Now, this is
9 oranges, watermelons, watermelon rinds, orange
10 peel, cups with whatever is left from Gatorade in
11 them. Again, I spent a lot of time looking at
12 this. I did not see any bugs, any ants, anything
13 like that on that.

14 **A. I don't see any ants either.**

15 **Q.** Can we go back to Exhibit 145, please --
16 actually 146.

17 If you took that tray -- you've been at
18 Angel Valley for many years?

19 **A. Two years.**

20 **Q.** If you took a tray of watermelon and you
21 took it and you left it right on that brush line or
22 right next to the creek line or right in the brush
23 in the bushes and just put it there and left it
24 there for 24 hours, 30 hours, think you might have
25 some bugs on it?

1 **A. I would assume so. Yeah.**

2 **Q.** You think it might be covered in ants?

3 **A. You would think so.**

4 **Q.** And if you took a container of Gatorade,
5 which is, basically, sugar and water, sticky sugar
6 and water, and you just stuck it right next to
7 there, like 6 or 7 feet, 10 feet away from the
8 sweat lodge -- if you just put it down there and
9 just left it there for 30 hours in the sun, think
10 there might be some bugs on it?

11 **A. You would think so.**

12 **Q.** If you took a bunch of old, used cups
13 that were filled with Gatorade and sugar and
14 whatever and you just threw them all in the bushes
15 6 or 7 feet, 10 feet away from the sweat lodge,
16 might have a few ants crawling around on that?

17 **A. You would think so.**

18 **Q.** And you're not just guessing here. I
19 mean, you've been on that property a lot, and there
20 are critters everywhere?

21 **A. Yes. There is ants.**

22 **Q.** But there weren't any ants at all in any
23 of the pictures with the fruit, the watermelon, the
24 Gatorade, the orange peels, the oranges, the pizza
25 box, all of that?

1 **A. On these pictures, no. There isn't any**
 2 **ants.**
 3 **Q.** You don't see any ants?
 4 **A. Can I expand on that question?**
 5 **Q.** Sure.
 6 **A. In the past I have seen bugs on stuff,**
 7 **though, and on the sweat lodges.**
 8 **Q.** Okay. You have seen bugs at other sweat
 9 lodges; right?
 10 **A. Yeah.**
 11 **Q.** And so at other sweat lodges, you may
 12 have seen bugs right on that spot; correct?
 13 **A. It's possible.**
 14 **Q.** I think you just said you did.
 15 **A. Yeah.**
 16 **Q.** Let's be clear.
 17 **A. Yes.**
 18 **Q.** At other sweat lodges, you have seen bugs
 19 crawling around doing their thing around the sweat
 20 lodge?
 21 **A. Sure.**
 22 MR. LI: Your Honor, would this be a good
 23 time?
 24 THE COURT: It would. Thank you, Mr. Li.
 25 We will take the noon recess, ladies and

1 gentlemen. Please remember the admonition. And
 2 please be reassembled at 1:30.
 3 And, Mr. Mercer, recall the rule of
 4 exclusion. And you are excused too.
 5 We will be in recess.
 6 (Recess.)
 7 THE COURT: The record will show the presence
 8 of the defendant, Mr. Ray; the attorneys, and the
 9 jury. Mr. Mercer is on the witness stand.
 10 Mr. Li.
 11 MR. LI: Thank you, Your Honor.
 12 **Q.** Good afternoon, Mr. Mercer. It's been a
 13 long day. Thank you very much for your patience.
 14 Mr. Mercer, I'm going to approach you
 15 with two exhibits, one that's been admitted, which
 16 is Exhibit 797. And I'm also going to bring in
 17 another exhibit, which is 799.
 18 Your Honor, I believe the state has no
 19 objection to the admission of Exhibit 799.
 20 MS. POLK: That's correct, Your Honor.
 21 THE COURT: 799 is admitted.
 22 (Exhibit 799 admitted.)
 23 **Q.** BY MR. LI: Now, Mr. Mercer, I'm going to
 24 show you Exhibit 797, which is the pump house
 25 that's been all cleaned up. Remember you said that

1 you had never seen it like that?
 2 **A. No.**
 3 **Q.** This is the floor of the pump house. You
 4 see the walls and all that?
 5 **A. Yes.**
 6 **Q.** I'm going to show this to the jury in a
 7 second. But this is a plate with some biscuits on
 8 it.
 9 **A. That's correct.**
 10 **Q.** If I represent to you that this has been
 11 taken in 2011, you'll accept that; right?
 12 **A. Yes.**
 13 **Q.** This picture was taken by the Hamiltons.
 14 **A. Yes.**
 15 **Q.** Have you ever seen the rat poison
 16 presented to the rats in this manner?
 17 **A. No, I have not.**
 18 MR. LI: I'm going to publish, Your Honor,
 19 Exhibit 797, which is admitted.
 20 THE COURT: All right.
 21 **Q.** BY MR. LI: Now, sir, this is the pump
 22 house; correct?
 23 **A. That's correct.**
 24 **Q.** And you testified this has been
 25 completely cleaned up, looks nothing like you've

1 ever seen it before?
 2 **A. That's exactly right.**
 3 **Q.** Now I'm going to show you what I just
 4 showed you, which is Exhibit 799, which is the
 5 artfully placed plate of rat poison for the rats to
 6 enjoy?
 7 **A. Yes.**
 8 **Q.** Now, you have never, ever, ever, ever
 9 seen the rat poison in the pump house offered to
 10 the rats on a dinner plate, have you?
 11 **A. No, I have not.**
 12 **Q.** And if I told you that the Hamiltons took
 13 this picture, you would say it's been staged;
 14 correct?
 15 **A. Possibly. Yes.**
 16 **Q.** That's not how you poison rats, is it?
 17 **A. That isn't the way I would do it.**
 18 **Q.** And it's certainly not the way you saw it
 19 at any time you went to the pump house to get any
 20 tarps; correct?
 21 **A. That's correct.**
 22 **Q.** You saw it sprinkled on the ground near
 23 holes.
 24 **A. Yeah.**
 25 **Q.** If you want to actually kill a rat,

1 that's probably what you do?

2 **A. I would think so.**

3 **Q.** Now, before the break we had talked a
4 little bit about guessing and not guessing. And
5 you remember that whole conversation?

6 **A. Yes, I do.**

7 **Q.** And you remember that we are not going to
8 present to the jury your guesses about whether the
9 tarps are the same or the wood is exactly the same
10 or the land is the same; correct?

11 **A. That's correct.**

12 **Q.** If somebody tries to tell you to guess to
13 the jury, you're going to correct them; right?

14 **A. Yes.**

15 **Q.** Because, in fact, as we discussed, you do
16 not know whether the land had any poisons on it;
17 correct?

18 **A. No. I do not know.**

19 **Q.** In fact, the wood was not the same;
20 correct?

21 **A. No. Because the last wood was burnt up.**

22 **Q.** And, in fact, it's not even the same type
23 because you used different proportions; correct?

24 **A. That's correct.**

25 **Q.** And, in fact, the stones are not the

1 same?

2 **A. No, they're not.**

3 **Q.** Because you only use them once?

4 **A. That's right.**

5 **Q.** And, in fact, you have no idea whether
6 the tarps are the same because they're all
7 indistinguishable?

8 **A. That's correct.**

9 **Q.** And some of the blankets are
10 recognizable, but many aren't?

11 **A. Yes.**

12 **Q.** You also don't have any idea whether any
13 poisons were added to the tarps during the 270 days
14 between January and October of 2009; correct?

15 **A. Correct.**

16 **Q.** And you also agree that the kiva is
17 different in 2007 from that used in 2008 and 2009;
18 correct?

19 **A. Yep. That's correct.**

20 **Q.** Now, let's talk for a second about the
21 wood, if we could.

22 **A. Okay.**

23 **Q.** Tell us how you heated up the rocks.

24 **A. Well, I make a big base for the rocks. I**
25 **make a big base of wood. And then I pile the rocks**

1 **on top of that base. And then I would put wood**
2 **over the top of the rocks until I couldn't see them**
3 **anymore.**

4 **Q.** And just focusing for a second on 2009,
5 October 2009, the James Ray International sweat
6 lodge.

7 **A. Okay.**

8 **Q.** When you created that first base of wood,
9 what kind of wood was it?

10 **A. It was the construction wood that was**
11 **provided for us.**

12 MR. LI: Your Honor, with no objection from
13 the state, I would ask to admit exhibit 493 and
14 512?

15 THE COURT: 493 and 512 are admitted.

16 (Exhibits 493 and 512 admitted.)

17 MR. LI: Thank you. May I approach.

18 THE COURT: Yes.

19 **Q.** BY MR. LI: Mr. Mercer, I'm going to show
20 you two photographs. One is Exhibit 493 and the
21 other is Exhibit 512. These are a wood pile taken
22 on October 9, the day after the accident. You can
23 see the police tape. Do you recognize this?

24 **A. Yes, I do.**

25 MR. LI: If we could have 493. I got to

1 switch that.

2 **Q.** Now, see that -- I'm going to circle it
3 first. This is a big pile of wood; correct?

4 **A. Yes.**

5 **Q.** Is that the wood that you used?

6 **A. I used this construction wood in front.**
7 **I didn't use any of the stuff behind that.**

8 **Q.** I see. Hang on.

9 So when you say you used the construction
10 wood in front, can you show us which wood you used.

11 **A. It was this pile right here. And it was**
12 **rather large, a bit larger than that.**

13 **Q.** These are also known as "D logs"; right?

14 **A. I don't know. I'm not a construction**
15 **person.**

16 **Q.** They're logs that are in the shape of a
17 "D."

18 **A. Okay.**

19 **Q.** And they sort of -- they're grooved, and
20 they stack on top of each other to make log cabins.

21 **A. Yes.**

22 MR. LI: Now, if we could move back a little.

23 **Q.** So when you made the stack of wood in the
24 pit --

25 **A. Uh-huh.**

1 Q. -- to light the fires, show us which logs
2 you used to make the floor.

3 A. **The same ones that are right here. That**
4 **was all that was there for us. I would stack those**
5 **probably two or three lengthwise and probably three**
6 **wide. So there was nine boards in there that I**
7 **could put all the rocks on top of.**

8 Q. You can't just hold a match to that and
9 light it, can you?

10 A. **Yes.**

11 Q. You can literally just hold a match?

12 A. **We put a little straw in there to help.**

13 Q. Get some straw. Let me ask you a
14 question. You see that pile of wood in the front?

15 A. **Yes.**

16 Q. Right here?

17 If we can blow that up.

18 Now, that pile of wood -- correct me if
19 I'm wrong, that pile of wood is, basically, almost
20 right in front of the fire pit?

21 A. **No. It's off to the side. It's off to**
22 **the -- if you're facing the wood from the fire pit,**
23 **it would be off your right side. And it was kind**
24 **of out of the way.**

25 Q. Are you sure?

1 A. **Yeah. Because on that particular area**
2 **right there, right here the pit is over here, and I**
3 **could walk around here. This is another trail that**
4 **goes down to the creek down that way. So it really**
5 **wasn't in my way.**

6 Q. Okay. So it's your testimony -- okay.
7 The fire pit is somewhere around here -- right? --
8 because you can see the disturbed dirt; correct?

9 A. **Yes.**

10 Q. And it's your testimony, then, I take it,
11 that even though these pieces of wood, including
12 some D logs, including some two-by-eights -- that
13 looks like probably a two-by-six, four-by-six's,
14 including those logs, you did not use those logs.
15 That's what your testimony is?

16 A. **Yes.**

17 Q. Even though they're right near the fire
18 pit?

19 A. **That's correct. Because the other ones**
20 **burn so much better.**

21 Q. Now, if you take a look at those logs for
22 a second, these ones here -- I'm sorry. The
23 construction wood. Now, some of that wood has a
24 bit of a green tint. Can you see it?

25 A. **No. Not really.**

1 Q. Well, this is -- I'm going -- this is
2 what I'll call "wood color."

3 A. **Okay.**

4 Q. This one too?

5 A. **Uh-huh.**

6 Q. This one back here has got a little green
7 to it, doesn't it?

8 A. **Yeah. I guess it would. I don't have my**
9 **glasses, and my eyes aren't that good. It appears**
10 **to have some green in it. Yes.**

11 MR. LI: Can we go back a second.

12 Q. And this one over here has a little green
13 in it. You see that?

14 A. **That has green in it too. Yes.**

15 Q. Now, have you ever purchased
16 pressure-treated wood? Ever made a fence?

17 A. **No, I haven't.**

18 Q. You ever seen a fence made?

19 A. **I bet you I have. Yes.**

20 Q. You understand that pressure-treated wood
21 is treated so that termites and wood rot doesn't
22 happen; right?

23 A. **Yes.**

24 Q. If you sink a fence post, for instance,
25 into the earth --

1 A. **Uh-huh.**

2 Q. -- you don't want to use an untreated
3 piece of wood because you're going to be replacing
4 it in about a year --

5 A. **Yeah.**

6 Q. -- because it will rot?

7 A. **Yeah.**

8 Q. It's also true, isn't it, that if you're
9 going to build a house, say, a log cabin in Sedona,
10 and you build a foundation that is on the ground,
11 you do not want to be replacing that foundation
12 every year, do you?

13 A. **I wouldn't think so. No.**

14 Q. So you use pressure-treated wood;
15 correct?

16 A. **Yes.**

17 Q. So it doesn't rot?

18 A. **Uh-huh.**

19 Q. And so that termites don't get at it?

20 A. **I would assume so. Yeah.**

21 Q. Let me ask you this: I went to Home
22 Depot, and just pulled this off of the lumber rack.
23 Let me ask you this: Is it a good idea or bad idea
24 to burn pressure-treated wood?

25 A. **I would think it would be a bad idea.**

1 **Q.** In fact, it would be the No. 1 thing
 2 you're not supposed to do with a piece of
 3 pressure-treated wood; correct?
 4 **A.** **I don't know.**
 5 **Q.** Are you aware whether or not the ash from
 6 pressure-treated wood, not the smoke, but the ash
 7 from pressure-treated wood is dangerous?
 8 **A.** **I don't know. I'm a carpet layer. I**
 9 **never worked with wood.**
 10 **Q.** Now, Mr. Hamilton, not you, but
 11 Mr. Hamilton, decided what wood you're supposed to
 12 use; correct?
 13 **A.** **Yep.**
 14 **Q.** He's the one that told you what piles of
 15 wood to us?
 16 **A.** **Yes. That was set right out in front of**
 17 **us. And yeah. That was for us to use.**
 18 **Q.** And it was not, for instance, Mr. Ray who
 19 told you what wood to use; correct?
 20 **A.** **No.**
 21 **Q.** That's what you said on your tape?
 22 **A.** **That's what I said in my tape?**
 23 **Q.** In the recorded interview.
 24 **A.** **Oh. No. He didn't tell us anything.**
 25 **Q.** Nobody from James Ray International told

1 you what kind of wood to use; correct?
 2 **A.** **No.**
 3 **Q.** In fact, you also told Detective Diskin
 4 on October 9 that you had used treated wood;
 5 correct?
 6 **A.** **I don't know if I actually said it was**
 7 **treated or not.**
 8 **Q.** He asked you whether or not it was
 9 pressure treated; correct?
 10 **A.** **I think so. Yeah.**
 11 **Q.** And you weren't sure?
 12 **A.** **I wouldn't really have any idea because I**
 13 **didn't purchase the wood.**
 14 **Q.** You told him, really not even in response
 15 to a question, the only different thing that
 16 happened on this sweat lodge other than the sweat
 17 lodges, we used this wood here that they cut up.
 18 The wood that's over there -- we used that instead
 19 of natural tree wood.
 20 And Detective Diskin asked you, some of
 21 it is pressure treated?
 22 Do you remember that?
 23 **A.** **Yeah.**
 24 **Q.** And you said, yeah. And we have -- do
 25 you remember that?

1 **A.** **If that's what the transcript said, then**
 2 **that's what they said. I really don't remember the**
 3 **conversation 100 percent.**
 4 MR. LI: Your Honor, we'd ask to play
 5 Exhibit 680, which is the transcript, 681, page 4,
 6 at lines 7 through, I believe, page 5. Sorry.
 7 Page 4, line 7 through 25, I believe.
 8 MS. POLK: The state has no objection, Your
 9 Honor.
 10 THE COURT: Okay. Then that excerpt will be
 11 played.
 12 MR. LI: Thank you, Your Honor.
 13 (Exhibit 681 played.)
 14 MS. POLK: Your Honor, Mr. Li indicated he was
 15 going to play through line, I believe, 25. He
 16 stopped short. He stopped at line 19.
 17 MR. LI: We'll play it again. It says
 18 Michael, the owner of the place. That's at line
 19 21.
 20 MS. POLK: The part omitted is Detective
 21 Diskin saying, okay. I'll check into that.
 22 And there was a question about whether or
 23 not there was flame in sight.
 24 MR. LI: I apologize. I think I meant line
 25 22, then.

1 THE COURT: Can you play that?
 2 MR. LI: I can't from here. I'll read it into
 3 the record.
 4 THE COURT: All right.
 5 MR. LI: And then Detective Diskin asked
 6 you -- first of all, we'll start off -- I don't
 7 know what that wood is. Michael, the owner of the
 8 place, he's a contractor. So he should know what,
 9 if it's safe to burn or not, I would think.
 10 Detective Diskin says, okay. I'll check
 11 into that. But there -- was there ever a flame
 12 inside there?
 13 Mr. Mercer says, no.
 14 MS. POLK: Thank you.
 15 THE COURT: Thank you, Mr. Li.
 16 **Q.** BY MR. LI: Mr. Mercer, you heard
 17 Detective Diskin on that tape say, oh. I see there
 18 is some pressure-treated wood; right?
 19 **A.** **Yes.**
 20 **Q.** And he said -- he also told you that he
 21 would check into the wood; correct?
 22 **A.** **Uh-huh.**
 23 **Q.** I'm sorry. For the record it's got to
 24 be --
 25 **A.** **Yes. I'm sorry.**

1 Q. It's okay.
 2 If Mr. Hamilton said, there is no
 3 pressure-treated wood at Angel Valley, that would
 4 be false, wouldn't it?
 5 A. **I don't know myself because I don't know**
 6 **what pressure-treated wood looks like right**
 7 **offhand.**
 8 Q. Fair enough. And --
 9 MS. POLK: Your Honor, the state would object
 10 to the last question that assumes facts not in
 11 evidence.
 12 THE COURT: Sustained.
 13 MR. LI: Okay. I'll rephrase it.
 14 Q. You don't know one way or another whether
 15 pressure-treated wood was ever used at Angel
 16 Valley; correct?
 17 A. **That's correct.**
 18 Q. But you did hear Detective Diskin say,
 19 some of it is pressure treated, and then he said, I
 20 see that one is?
 21 A. **Okay.**
 22 Q. You did hear that, didn't you?
 23 A. **If that's what the transcript said.**
 24 THE COURT: Ms. Polk.
 25 MS. POLK: Your Honor, first of all, this

1 witness is not disagreeing. But, secondly, Mr. Li
 2 just read a statement by Diskin as if it were a
 3 statement instead of a question. The jury has just
 4 heard it. But it's being misrepresented by Mr. Li
 5 to suggest that it was a statement that some of it
 6 is pressure treated instead of a question, which
 7 was some of it is pressure treated.
 8 THE COURT: Mr. Li, would you look and let's
 9 get the correct language.
 10 MR. LI: Absolutely, Your Honor.
 11 It's absolutely correct that
 12 Detective Diskin asked the question, some of it is
 13 pressure treated?
 14 And then Mr. Mercer answers, yeah. And
 15 we have --
 16 And then Detective Diskin says, I see
 17 that one is.
 18 We can play it again if the state would
 19 like.
 20 MS. POLK: We don't need to play it. But the
 21 state would request that lines 13 through 15 also
 22 be read.
 23 MR. LI: Let's just play it.
 24 THE COURT: All right. Go ahead and play it.
 25 (Exhibit 681 played.)

1 Q. BY MR. LI: You were telling Detective
 2 Diskin, I used that pile of wood?
 3 A. **That's correct.**
 4 Q. And Detective Diskin said, oh. Some of
 5 it is pressure treated? And he was pointing at
 6 something.
 7 And you said, no. I used that wood.
 8 But he said, I see that one is. Right?
 9 A. **Okay.**
 10 Q. Is that right?
 11 A. **That's what he said. Yeah.**
 12 Q. You were there. I wasn't.
 13 A. **Yeah. But can I explain a little?**
 14 Q. Of course.
 15 A. **I don't know what pressure-treated wood**
 16 **is all about.**
 17 Q. And that's absolutely fair. And it goes
 18 right back to the we're not going to guess.
 19 A. **Exactly.**
 20 Q. Now, on that same day, October 9, 2009,
 21 the detectives came and took some things from Angel
 22 Valley?
 23 A. **Yes.**
 24 MR. LI: If I could have Exhibit 512, please.
 25 Q. So here is the wood pile. You see that?

1 A. **Yes.**
 2 Q. And you see these little --
 3 If we could blow the wood pile up.
 4 Enlarge it, rather.
 5 You see these, like, little numbers?
 6 A. **Yes, I do.**
 7 Q. So the detectives took four pieces of
 8 wood from Angel Valley that day; right?
 9 A. **Okay.**
 10 Q. Do you know that one way or the other?
 11 A. **No, I don't.**
 12 Q. I'm not going to ask you what you don't
 13 know. But you do see there are four little number
 14 tags, evidence tags?
 15 A. **Yes.**
 16 Q. And you would agree that they are on this
 17 log, that log, that log and that log?
 18 A. **It appears to be.**
 19 Q. And there are no other evidence tags
 20 anywhere else, are there? I mean, on the wood
 21 pile.
 22 A. **Not that I can see.**
 23 MR. LI: If we could pull back.
 24 Q. And there are definitely no --
 25 If we could blow up the small stack.

1 There are no evidence tags on any of this
 2 wood here; correct?
 3 **A. That's correct.**
 4 **Q.** Now, the accident took place on
 5 October 8, 2009; right?
 6 **A. Yes.**
 7 **Q.** And you were interviewed by the police on
 8 the evening of October 8, 2009?
 9 **A. Yes.**
 10 **Q.** In the hospital with your wife?
 11 **A. Yes.**
 12 **Q.** Debbie Mercer?
 13 **A. Yes.**
 14 **Q.** Who was suffering from nausea, headache?
 15 **A. Upset stomach.**
 16 **Q.** Upset stomach. All of that. And she had
 17 talked to the paramedics, and the paramedics said
 18 you should go to the hospital?
 19 **A. Just to get checked out.**
 20 **Q.** Just to make sure?
 21 **A. Uh-huh.**
 22 **Q.** And then you told Detective Edgerton that
 23 it was possible that somebody had spiked the water?
 24 **A. Well, she asked me if that was possible,**
 25 **and I said, it's possible.**

1 **Q.** Because you don't know one way or the
 2 other?
 3 **A. No. I'm not by the water all the time.**
 4 **Q.** And you're not going to guess?
 5 **A. No. I'm not going to guess.**
 6 **Q.** But you did say, I think it's the wood?
 7 **A. I did say that. Yeah.**
 8 **Q.** And then you were interviewed again by
 9 Detective Diskin about this exact wood pile?
 10 **A. Yes.**
 11 **Q.** And you also told them about the rat
 12 poison?
 13 **A. Yes.**
 14 **Q.** And he said he'd check into that?
 15 **A. Yes.**
 16 **Q.** Now, on October 9, as we've already
 17 discussed, the police came and took some evidence?
 18 **A. Yes.**
 19 **Q.** And do you know that they took four
 20 one-by-one, approximately, sections of the tarps?
 21 **A. Not until last week.**
 22 **Q.** So they cut into -- how do you know that?
 23 **A. Because they told me.**
 24 **Q.** Who told you?
 25 **A. I'm not sure which one of them told me**

1 **that. We had a little meeting, and they said they**
 2 **had cut out some sections of the sweat lodge.**
 3 **Q.** They were telling you what their evidence
 4 showed?
 5 **A. They didn't say anything about what it**
 6 **showed. They just said she cut sections out.**
 7 **Q.** Did they say they tested it or anything
 8 like that?
 9 **A. I didn't hear anything like that.**
 10 **Q.** When you were meeting with the state to
 11 prepare to testify today, they told you about some
 12 of the investigative work they had done?
 13 **A. All they said is they had taken sections**
 14 **of the sweat lodge in different places.**
 15 **Q.** Okay. When they -- they were describing
 16 to you what they did to investigate this case;
 17 right?
 18 **A. I guess.**
 19 **Q.** So they were telling you that they had
 20 taken four one-by-one squares of the tarps?
 21 **A. Yeah. They didn't specifically tell me**
 22 **how big it was. They said they cut out some**
 23 **sections of the tarps.**
 24 **Q.** What else about their investigation did
 25 they tell you?

1 **A. That was about it.**
 2 **Q.** That's the only thing they told you?
 3 **A. As far as I remember, yeah.**
 4 **Q.** So they shared with you before you
 5 testified today things that you just didn't know
 6 already?
 7 **A. Well, that was the only thing that I**
 8 **didn't know, that they had cut it up.**
 9 **Q.** So instead of just having you tell them
 10 what you remembered, they were sharing information
 11 with you; correct?
 12 **A. The only thing that they told me was they**
 13 **took sections -- they cut out sections of the sweat**
 14 **lodge, and they were going to show it to me**
 15 **possibly.**
 16 **Q.** I understand that. I guess my question
 17 I'm asking you is that instead of just sitting
 18 there listening to you tell what you know, they
 19 told you about their investigation?
 20 **A. They told me -- all they told me about**
 21 **their investigation was they have taken some**
 22 **sections of the sweat lodge.**
 23 **Q.** Okay. Fair enough. They are one-by-one
 24 squares?
 25 **A. I don't know. I didn't see them.**

1 Q. And they took -- do you -- how many
2 square feet of tarp was there for the sweat lodge
3 total?

4 A. **I couldn't tell you.**

5 Q. Hundreds right?

6 A. **Probably.**

7 Q. Maybe a thousand square feet?

8 A. **I don't know.**

9 Q. So if they took a four-by-four -- strike
10 that.

11 If they took a four one-by-one sections,
12 four square feet --

13 A. **Uh-huh.**

14 Q. Sounds right?

15 A. **Okay.**

16 Q. Out of hundreds of square feet of tarp
17 and blanket --

18 A. **Yeah.**

19 Q. -- right? They will have only taken one
20 percent, two percent of the entire tarp?

21 A. **I guess. I'm not very good with math.**

22 Q. So then they took some logs. They took a
23 few samples of the sweat lodge tarps. And then
24 they released the crime scene, the scene back to
25 the Hamiltons; correct?

1 A. **I don't know that for sure. I just knew
2 that the tape was gone and all the equipment was
3 gone.**

4 Q. So a day after they did the search, they
5 took all of these things, less than 48 hours after
6 three people -- two people died and one person
7 would die later, they took down the yellow tape?

8 A. **Yes, I think so.**

9 Q. Less than 48 hours, the Hamiltons decided
10 to burn the pieces of the sweat lodge; correct?

11 A. **Yes, they did.**

12 Q. And they decided to take the remaining
13 pieces of tarp, cut it up, throw it into a van and
14 drive off with it?

15 A. **That's what they did.**

16 Q. And the wood that you had burned, they
17 cleared away as well; correct?

18 A. **That is correct.**

19 Q. And you were there; right?

20 A. **I was there. Yes.**

21 Q. I'm going to put some -- offer some
22 photographs.

23 By the way, while they're looking at the
24 photographs, this meeting you had last week with
25 the state, who was there?

1 A. **Detective Diskin and the prosecuting
2 attorney.**

3 Q. Ms. Polk?

4 A. **Ms. Polk.**

5 Q. Was anybody else there?

6 A. **Our attorney was there.**

7 Q. Your attorney was there?

8 A. **My wife and my daughter was there and I
9 was there.**

10 Q. So all three of you were there in the
11 same room; is that right?

12 A. **Yes.**

13 Q. While you discussed what the evidence was
14 going to be in this trial?

15 A. **No. They took me aside into another room
16 when they talked to me.**

17 Q. Okay. Did your attorney -- and -- is
18 this your attorney here?

19 A. **Lindstrom. Monica Lindstrom.**

20 Q. Monica Lindstrom. And she has been kind
21 enough to drive down from Scottsdale and sit here
22 in her condition for the last three days?

23 A. **Yes. She's a wonderful person.**

24 Q. She's a wonderful person. And she has
25 been here to represent you and protect you;

1 correct?

2 A. **That's correct.**

3 Q. And she was there at the interview when
4 the state discussed the case with you?

5 A. **Yes, that's correct.**

6 **May I add something, please?**

7 Q. Of course.

8 A. **Monica is doing all this work on her own
9 time, and she's not charging us for anything. It's
10 all been for free.**

11 Q. That's great.

12 MR. LI: Your Honor, with no objection, I'm
13 offering exhibits 559, 560, 561, 564, 562 and 663.

14 THE COURT: Excuse me. 559 through 564
15 inclusive are admitted.

16 (Exhibits 559 through 564 admitted.)

17 MR. LI: If we could have Exhibit 559 up,
18 please.

19 Q. This is a stack of the willow branches;
20 correct?

21 A. **Yes, it is.**

22 Q. And also with it are tobacco pouches that
23 were found on the scene; right?

24 A. **Yes.**

25 MR. LI: And if we could have 560.

1 Q. This is that same stack with the tobacco
2 pouches being burned; correct?

3 A. **It appears so.**

4 MR. LI: If we could blow up these two people
5 here.

6 Q. Who are they?

7 A. **That's Michael and Amayra Hamilton.**

8 Q. And they are sitting there watching the
9 burning of the tobacco pouches and the willow
10 branches; correct?

11 A. **That's correct.**

12 Q. Now, they also --

13 If we could have 561 up.

14 They also raked the ground, didn't they?

15 A. **You know, I don't know that one.**

16 Q. But they cleared off everything?

17 A. **Yeah.**

18 Q. And there is a wood pile?

19 A. **Yes.**

20 Q. And later on that wood pile is removed;
21 right?

22 A. **Yeah. I guess so. I don't really
23 remember if it was removed or not.**

24 Q. If I represent to you that it's now gone,
25 you wouldn't have --

1 A. **I wouldn't argue with you.**

2 MR. LI: If we could have Exhibit 564 up.

3 Q. Now, this is the same site; correct?

4 A. **That's correct.**

5 Q. And there is nothing left of the sweat
6 lodge; correct?

7 A. **Nothing at all.**

8 Q. And the -- the dirt has been -- I'm just
9 going to ask you. Has it been raked?

10 A. **I don't think it's been raked. It
11 certainly was cleared up.**

12 Q. It was cleared up. And this is probably
13 48 hours after the accident?

14 A. **It was the same -- you know -- with that
15 ring of rocks, it was probably another day or so
16 after the burning.**

17 Q. Okay. But the burning was less than 48
18 hours after two people died?

19 A. **Well, they died that night. The whole
20 next day we couldn't do anything because the police
21 tape was there. So yeah. It was the next day
22 after that.**

23 Q. Less than 48 hours?

24 A. **I guess so.**

25 Q. And Mr. Hamilton -- he also cut up the

1 tarps?

2 A. **You know, I didn't see him cutting
3 anything. I did see him putting them in a truck --
4 in a van.**

5 MR. LI: If we can have Exhibit 562 up.

6 Q. This gentleman here with the hat on --
7 that's Michael Hamilton; correct?

8 A. **That is correct.**

9 Q. He's got something in his hand there,
10 that might be a box cutter, some sort of cutter?

11 A. **It's unidentifiable to me.**

12 Q. Okay.

13 If we could move back a little.

14 You can see that all of these tarps --

15 he's holding something that, I guess, is

16 unidentifiable. And he's got all these tarps in
17 front of him.

18 A. **Yeah. But that's a pretty normal scene
19 for the tarps after a sweat lodge.**

20 MR. LI: Why don't we take a look at
21 Exhibit 563.

22 Q. That's Mr. Hamilton again?

23 A. **Yes.**

24 Q. And he's cutting the tarps?

25 A. **He appears to be cutting something. Or**

1 **he could be untying the rope on it or something.
2 I'm not sure.**

3 Q. In any event, he's doing something with
4 the tarps?

5 A. **Yes, he is.**

6 Q. And he eventually takes them all, puts
7 them in his van and drives them somewhere?

8 A. **Yes.**

9 Q. Do you know where he took them?

10 A. **I don't know.**

11 Q. Was he throwing them away?

12 A. **I don't know.**

13 Q. Now, you know, do you not, that

14 Mr. Hamilton, Mrs. Hamilton, Angel Valley, all of
15 them, have been sued by 10 of the participants?

16 A. **I heard something like that. But I don't
17 know officially because -- you know -- I don't have
18 any contact with them.**

19 Q. Fair enough. I don't want you to guess.

20 A. **Correct.**

21 Q. And I don't need you to have any hearsay.
22 Did you ever talk to Mr. Hamilton about
23 burning the treated wood? Strike that.

24 Did you ever talk to Mr. Hamilton about
25 burning the construction wood and your concerns?

1 **A. No, I did not.**

2 **Q.** Did you ever talk to Mrs. Hamilton about
3 your concerns about having burned the construction
4 wood?

5 **A. No. Can I elaborate a little bit,**
6 **though?**

7 **Q.** Yes.

8 **A. We weren't really on friendly terms at**
9 **that time, so there wasn't a whole lot of talking**
10 **going on.**

11 **Q.** And you did not discuss with them the
12 burning of the wood?

13 **A. No.**

14 **Q.** And you did not discuss with them your
15 concerns?

16 **A. No. Because myself, I didn't have any**
17 **concerns at that time.**

18 **Q.** Okay. Let me rephrase that, then. The
19 fact that you thought the wood was the only thing
20 different?

21 **A. No. I didn't talk to them about that.**

22 **Q.** Now, did you talk to either of them about
23 the rat poison that you saw and told Detective
24 Diskin about?

25 **A. No, I did not.**

1 **Q.** Did you ever discuss with them the use of
2 herbicides or weed killer?

3 **A. Well, yes. That was not allowed on the**
4 **property. That's why we had to use the hula ho.**

5 **Q.** Okay. It's absolutely 100 percent never
6 allowed at Angel Valley to use weed killer?

7 **A. It was not. That's as far as I**
8 **understood.**

9 **Q.** Did you ever discuss with them the use of
10 insecticides?

11 **A. No, I did not.**

12 **Q.** Now, when you first interviewed with
13 Detective Diskin on October 9, you had been assured
14 that you and your wife would not be investigated
15 criminally; correct?

16 **A. He said he didn't think that there would**
17 **be any charges brought up against us.**

18 **Q.** But he did tell you that it would be
19 important for you to get a civil lawyer?

20 **A. Well, he did say that it wouldn't hurt to**
21 **talk to a lawyer.**

22 **Q.** A civil lawyer?

23 **A. I don't know if he said civil or not.**
24 **But he did say -- you know -- it wouldn't hurt.**

25 **Q.** And this is your lawyer?

1 **A. That's my lawyer. Do you want to know**
2 **how I got her?**

3 **Q.** That's okay. You got her because you had
4 some sort of policy where you could get her;
5 correct?

6 **A. Basically, yeah.**

7 **Q.** And she, out of the goodness of her
8 heart, is representing you here today?

9 **A. Exactly.**

10 **Q.** And protecting your interests?

11 **A. Exactly.**

12 **Q.** And Detective Diskin said it would be a
13 good idea under these circumstances to talk to a
14 lawyer?

15 **A. Yes, he did.**

16 **Q.** And so you followed his advice and talked
17 to a lawyer?

18 **A. That's correct.**

19 **Q.** And you had also been assured by
20 Detective Diskin that you would not be investigated
21 criminally; correct?

22 **A. That's correct.**

23 MR. LI: I have nothing further, Your Honor.

24 THE COURT: Thank you, Mr. Li.

25 Ms. Polk.

1 MS. POLK: Thank you, Your Honor.

2 REDIRECT EXAMINATION

3 BY MS. POLK:

4 **Q.** Mr. Mercer, I'd like to start by looking
5 at that easel. Can you see from where you're
6 seated what's on it?

7 **A. Yes.**

8 **Q.** I'd like to talk a little bit about the
9 information that is on there and what was the same
10 between Mr. Ray's sweat lodges between 2007, 2008
11 and 2009.

12 If we look at what's written up there at
13 the top, which is the frame --

14 **A. Uh-huh.**

15 **Q.** For 2008 -- for Mr. Ray's sweat lodge
16 in 2008 and 2009, was the frame different or the
17 same?

18 **A. It was a different frame.**

19 **Q.** For the sweat lodge in 2008 and 2009?

20 **A. 2008 and 2009 was a new kiva.**

21 **Q.** So between 2008 and 2009, was that frame
22 the same or different?

23 **A. It was the same.**

24 **Q.** And then just talking about 2008

25 and 2009, Mr. Ray's sweat lodges, the coverings,

1 the blankets and the sleeping bags. To the best of
2 your knowledge, were they the same between
3 Mr. Ray's sweat lodges for '08 and '09?

4 **A. Yes, they were.**

5 **Q.** And, to the best of your knowledge, were
6 the tarps the same or different?

7 **A. They were the same. And can I elaborate**
8 **a little bit?**

9 **Q.** Yes.

10 **A. The reason I know they're the same is**
11 **because they were stacked in the same order that we**
12 **had put them in. They looked the same as when we**
13 **left them last.**

14 **Q.** And then the stones that are burned that
15 are heated and then put into the sweat lodge
16 for 2008 and 2009 -- were they the same stones or
17 different stones?

18 **A. They were different stones.**

19 **Q.** And the wood that you used to heat the
20 stones in 2008 and 2009 -- was it of the same type
21 of wood or different wood?

22 **A. In 2008 we used a combination of regular**
23 **tree wood that we found around the property and the**
24 **construction wood that we used in 2009.**

25 **Q.** So partly the same and partly different?

1 **A. That's correct.**

2 **Q.** And for the land, you were asked
3 questions about how that land was maintained. And
4 a couple times you asked if you could clarify?

5 **A. Uh-huh.**

6 **Q.** Would you just tell the jury what you
7 know about how the land where the sweat lodge was
8 located -- how that was maintained in 2008
9 and 2009?

10 MR. LI: Your Honor, objection. 602, personal
11 knowledge, calls for speculation.

12 THE COURT: Sustained.

13 **Q.** BY MS. POLK: In 2008 do you know how
14 that land was maintained?

15 **A. Yes.**

16 **Q.** How do you know that?

17 **A. Because I was the one that was taking**
18 **care of it.**

19 **Q.** And tell the jury how in 2008 you
20 maintained the land.

21 **A. Well, we maintained it with hula hoes.**
22 **And we didn't do a whole lot of weeding in that**
23 **area because underneath all the sand and everything**
24 **there was a landscaping cloth underneath there to**
25 **help prevent anything growing up. The reason I**

1 **know that is because we move rocks around**
2 **sometimes, and it gets exposed, and we cover it**
3 **back up.**

4 **Q.** Tell the jury when you first became aware
5 there was that landscaping cloth beneath the sand
6 at the site of the sweat lodge?

7 **A. In '07.**

8 **Q.** When you first started working there?

9 **A. Yes. It was pretty apparent it was**
10 **there.**

11 **Q.** To your knowledge, did that change at any
12 time you were working at Angel Valley?

13 **A. No, it did not.**

14 **Q.** With respect to 2009, you testified you
15 weren't working there. Did you still live on the
16 property?

17 **A. I lived on the property, and I actually**
18 **walked on the property every day.**

19 **Q.** When you walked every day, did you walk
20 past the site where the sweat lodge is located?

21 **A. Yes, I did.**

22 **Q.** And did you ever observe any activity
23 in 2009 with respect to maintaining that land?

24 **A. No.**

25 **Q.** Did you observe anything that was any

1 different than what you had done yourself in 2008?

2 **A. I had not observed anything.**

3 **Q.** Just talking about 2008 and 2009 and
4 Mr. Ray's sweat lodges then, and what was the same
5 and what was different in 2009, did you observe
6 people sick after his sweat lodge ceremony?

7 **A. Yes, I did.**

8 **Q.** And in 2008, did you observe people sick
9 after Mr. Ray's sweat lodge ceremony?

10 **A. Yes, I did.**

11 **Q.** Let's talk about 2007. I want to compare
12 2007, then, to -- Mr. Ray's sweat lodge ceremony in
13 2007 to his sweat lodge ceremony in 2009.

14 **A. Okay.**

15 **Q.** In 2007 was the frame used for the sweat
16 lodge for Mr. Ray the same or different as the one
17 used in 2009?

18 **A. It was different.**

19 **Q.** And were the blankets and the sleeping
20 bags, to the best of your knowledge, the same
21 coverings or different coverings?

22 MR. LI: Objection, Your Honor. To the best
23 of his knowledge requires personal knowledge.

24 THE COURT: Sustained.

25 **Q.** BY MS. POLK: Do you know whether or not

1 the blankets used in 2007 for Mr. Ray's sweat lodge
2 were the same as the blankets used in 2009?

3 **A. They appeared to be the same. Yes.**

4 MR. LI: Objection, Your Honor. Move to
5 strike.

6 THE COURT: Sustained.

7 **Q.** BY MS. POLK: That was a yes or no. Do
8 you know, Mr. Mercer, if the blankets were the same
9 in 2007 as the ones you used in 2009? Yes or no.

10 **A. Yes.**

11 **Q.** And what do you base that answer on?

12 **A. The different flower patterns and
13 different patterns on the blankets.**

14 **Q.** Meaning what?

15 **A. Meaning that I could distinguish the
16 difference between them and that I recognized them.**

17 **Q.** Do you recognize blankets used in 2007 as
18 the same that you used in 2009?

19 **A. Yes.**

20 **Q.** And with respect to the tarps -- this is
21 a yes or no question -- do you know if the tarps
22 used in Mr. Ray's 2007 sweat lodge were the same as
23 his 2009 sweat lodge?

24 **A. Yes and no.**

25 **Q.** And when you say, no, what do you mean?

1 **A. Well, some of them were new tarps in the
2 package. And we'd always be running low on tarps,
3 and we'd have to get new ones.**

4 **Q.** And when you say, yes, what do you mean?

5 **A. Yes. A lot of the material was the same
6 because I'm the one who had stacked it. I know
7 what it looked like when I stacked it.**

8 **Q.** And with respect to the rocks used in
9 2007, do you know whether they were the same for
10 Mr. Ray's sweat lodge -- do you know whether they
11 were the same type of rocks used in 2007 as used
12 for his sweat lodge in 2009?

13 **A. Yes. They're all lava rocks.**

14 **Q.** And with respect to the wood used to heat
15 the rocks for Mr. Ray's sweat lodge in 2007 --

16 MR. LI: Your Honor, I'm going to object to
17 the use of the term "Mr. Ray's sweat lodge." It's
18 actually Angel Valley's sweat lodge.

19 THE COURT: Ladies and gentlemen, I had
20 mentioned this before. Questions are phrased --
21 what the attorneys say, that's not the evidence.

22 There is a question phrased --

23 Ms. Polk, continue.

24 **Q.** BY MS. POLK: With respect to the wood
25 that you used in 2007 to heat the rocks for

1 Mr. Ray's sweat lodge ceremony, can you tell the
2 jury whether or not it was of the same type of wood
3 you used in 2009 for Mr. Ray's ceremony or
4 different.

5 **A. It was different.**

6 **Q.** And how was it different?

7 **A. It was natural tree wood.**

8 **Q.** And with respect to the land that the
9 sweat lodge sat on in 2007, do you know if it was
10 maintained in the same way as it was for Mr. Ray's
11 ceremony in 2009?

12 **A. As far as I know, yes.**

13 MR. LI: Objection. Move to strike, as far as
14 he knows.

15 THE COURT: Sustained and granted.

16 **Q.** BY MS. POLK: In 2009 in Mr. Ray's
17 ceremony, did people get sick?

18 **A. Yes.**

19 **Q.** And in 2007 noting what was the same and
20 what was different, did people get sick in
21 Mr. Ray's ceremony in 2007?

22 **A. Yes.**

23 **Q.** Now I'd like to ask you a few more
24 questions about ceremonies conducted by other
25 people during those same three years that you

1 assisted at -- ceremonies not conducted by Mr. Ray.

2 In 2007 the frame used for the sweat
3 lodge ceremony, for those ceremonies not conducted
4 by Mr. Ray, did you observe anybody get sick?

5 MR. LI: Your Honor, I'm going to object to
6 the term "sick." Vague, lacks foundation, and it's
7 leading.

8 THE COURT: As to form, I'll sustain that.

9 **Q.** BY MS. POLK: Mr. Mercer, I'll ask in a
10 different way. With respect to the 2007, the
11 ceremonies performed by other people other than
12 Mr. Ray, using that frame that was used in 2007,
13 did you observe anybody in distress?

14 MR. LI: Same objection, Your Honor.
15 "Distress."

16 THE COURT: I'd like to see the attorneys.
17 (Sidebar conference.)

18 THE COURT: Just so we don't have this come up
19 a lot, this terminology, I think, people know.

20 Mr. Li.

21 MR. LI: If she says, did you see anybody
22 throw up, or something like that, that's something
23 that's physically observable. I can live with
24 throwing up. If it's just vague terms, "distress,"
25 all of these sorts of things, it's very difficult

1 to quantify what he actually means. A little
2 precision would be helpful given how fraught with
3 peril this particular issue, is in our view.

4 And this witness has a tendency to
5 elaborate quite extensively. So if the questions
6 were more specific to something that this witness
7 can actually physically observe -- frothing of the
8 mouth, vomiting, that sort of thing -- then given
9 the Court's ruling, we wouldn't object.

10 But if it's these vague terms, he has a
11 tendency -- he says yes, and we don't even know
12 what that means.

13 MS. POLK: I can use those more specific
14 terms. Thank you.

15 (End of sidebar conference.)

16 Q. BY MS. POLK: Mr. Mercer, we're talking
17 now about the ceremonies conducted in 2007, using
18 the frame from 2007 and ceremonies not conducted by
19 Mr. Ray --

20 A. Okay.

21 Q. And specifically having gone over that
22 list with respect to what was different between
23 2007 and 2009 and what was the same.

24 A. Uh-huh.

25 Q. So with respect to the ceremonies

1 conducted by facilitators throughout 2007 that you
2 assisted, conducted by facilitators other than
3 Mr. Ray, did you ever observe anybody vomit?

4 A. No, I did not.

5 Q. Did you observe anybody become combative?

6 A. No, I did not.

7 Q. Did you ever observe anybody faint?

8 A. No.

9 Q. Did you ever observe anybody frothing at
10 the mouth?

11 A. No.

12 Q. Did you ever observe anybody with eyes
13 rolling back in their head?

14 A. No.

15 Q. Did you ever observe anybody become
16 unconscious?

17 A. No.

18 Q. Did you ever assist anybody in any way?

19 A. Not at all.

20 Q. I'm going to ask you some questions about
21 the rat poison that you testified about. First of
22 all, tell the jury, if you recall, what year you
23 first became aware of something that you believe in
24 the pump house could be rat poison.

25 A. '07.

1 Q. Did you ever notice any change in what
2 you originally saw in '07?

3 A. No, I did not.

4 Q. Did you ever at any time see anything
5 added to what you had first seen in '07?

6 A. No, I did not.

7 Q. In 2007 when you retrieved the blankets,
8 the sleeping bags and the tarps to build Mr. Ray's
9 sweat lodge, did you ever see --

10 MR. LI: Objection, Your Honor.

11 Q. BY MS. POLK: I'm sorry. To build the
12 sweat lodge for Mr. Ray's ceremony, did you ever
13 see any substance that appeared to be rat poison
14 inside the coverings themselves?

15 A. No, I didn't.

16 Q. And the same question for the tarps for
17 2007. Did you ever see anything in the tarps that
18 appeared to be rat poison?

19 A. No.

20 Q. And in 2007 did you ever smell anything
21 that appeared to be poisonous or chemical in the
22 tarps as you retrieved them to build Mr. Ray's --
23 the sweat lodge for Mr. Ray's ceremony?

24 A. No.

25 Q. Did you ever smell anything that smelled

1 like chemicals or appeared to be some sort of
2 pesticide in the blankets or the sleeping bags used
3 to build the sweat lodge for Mr. Ray's ceremony in
4 2007?

5 MR. LI: Objection, Your Honor. Lacks
6 foundation. Many pesticides don't have any scent
7 at all. Things get dissolved into --

8 THE COURT: Overruled.

9 You may answer that if you can.

10 THE WITNESS: Repeat the question. I'm sorry.

11 Q. BY MS. POLK: In 2007 when you retrieved
12 and handled the blankets and the sleeping bag and
13 the materials used to cover the sweat lodge for
14 Mr. Ray's ceremony, did you ever smell anything
15 that was out of the ordinary to you?

16 A. No, I didn't.

17 Q. And the same question for all of the
18 various sweat lodges that you put together in 2007.
19 Did you ever smell any chemicals or anything out of
20 the ordinary with respect to the tarps and the
21 blankets and the coverings?

22 A. No, I didn't.

23 Q. For 2008 when you retrieved and handled
24 and built the sweat lodge for Mr. Ray's ceremony,
25 the same question. Did you ever smell anything

1 unusual in any of those materials?

2 **A. No.**

3 **Q.** And for all the other sweat lodges that
4 you constructed in 2008, for facilitators other
5 than Mr. Ray, in handling the tarps and the
6 blankets and the sleeping bags, and the membrane --
7 or the big brown cover, did you ever smell anything
8 that smelled like chemicals or out of the ordinary
9 in any way?

10 **A. No.**

11 **Q.** And in 2009, same question. When you
12 handled the tarps and the blankets and the
13 coverings and the large brown deal to put together
14 the sweat lodge for Mr. Ray's ceremony, did you
15 smell anything suspicious?

16 **A. No, I did not.**

17 **Q.** And did you notice any sort of rat poison
18 or any other substance that appeared to be poison
19 fall out of any of the those materials?

20 **A. No.**

21 **Q.** Did you notice anything out of the
22 ordinary with respect to the tarps, the brown
23 cover, the blankets or the sleeping bags for
24 Mr. Ray's 2009 sweat lodge ceremony?

25 **A. No.**

1 **Q.** Did you ever spray the tarps used for the
2 sweat lodges from 2007, 2008, 2009 with any
3 substance?

4 **A. Water.**

5 **Q.** And did you ever spray any other
6 substance on the tarps?

7 **A. No.**

8 **Q.** And did you ever use those tarps in 2007
9 when you were volunteering at Angel Valley for
10 other purposes?

11 **A. You know, when the tarps would be taken**
12 **for other purposes, they would be gone for good**
13 **then. We'd have to get new ones because they take**
14 **them and nail them to stuff, and they'd cover**
15 **something else up. So I wouldn't see them again.**

16 **Q.** And is that true also for 2008? If a
17 tarp was used for another purpose, was it returned
18 to the pump house to use for the sweat lodges?

19 **A. Usually not.**

20 **Q.** And is that also true for 2009?

21 MR. LI: Objection. Lacks foundation.

22 THE COURT: Sustained.

23 **Q.** BY MS. POLK: You were asked a couple of
24 questions by Mr. Li about whether or not the sweat
25 lodge itself for 2009 was permitted by the county.

1 Do you remember that question?

2 **A. Yes, I do.**

3 **Q.** And your answer was what?

4 **A. I have no idea.**

5 **Q.** And for 2007 do you know if the sweat
6 lodges used at Angel Valley throughout this year
7 were permitted by county?

8 **A. Not that I know.**

9 **(Pause in proceedings.)**

10 **Q.** BY MS. POLK: I think I had asked you
11 about 2007, whether or not, to your knowledge, a
12 sweat lodge structure was ever permitted.

13 **A. Yeah. I don't know.**

14 **Q.** Same question for 2008. To your
15 knowledge, were any of those sweat lodges at the
16 Angel Valley property ever permitted?

17 **A. Not that -- I wouldn't know.**

18 **Q.** For 2009 do you know?

19 **A. No.**

20 **Q.** And then going back to the easel, I had
21 asked you about ceremonies conducted in 2007,
22 noting the differences and the similarities. I
23 want to ask you that same question for 2008.

24 First of all, Mr. Mercer, do you recall
25 whether there were ceremonies conducted at Angel

1 Valley in 2008 prior to the time in late August
2 when you built the new frame?

3 **A. Yes, there was.**

4 **Q.** And did you have a role in assisting
5 those ceremonies?

6 **A. Yes, I did.**

7 **Q.** And with respect to those ceremonies that
8 were conducted prior to the construction of the new
9 frame, then, the frame would have been different?

10 **A. Yes.**

11 **Q.** And how about the tarps and the blankets
12 and the coverings? Were the same ones used as 2009
13 or different ones?

14 **A. They're the same ones.**

15 MR. LI: Objection. Foundation.

16 THE COURT: Sustained.

17 **Q.** BY MS. POLK: With respect to these
18 ceremonies conducted at Angel Valley in 2008 before
19 the new frame was built, and those ceremonies
20 facilitated by somebody other than Mr. Ray, did you
21 ever -- and the ones you were at, did you ever
22 observe anybody vomiting?

23 **A. No.**

24 **Q.** Did you ever see anybody faint?

25 **A. No.**

1 Q. Did you ever see anybody froth at the
2 mouth?

3 A. No.

4 Q. Did you ever see anybody become
5 combative?

6 A. No.

7 Q. Did you ever see anybody with eyes
8 rolling back in the back of their head?

9 A. No.

10 Q. Did you ever see anybody with eyes with
11 the vacant stare that you described?

12 A. No.

13 Q. Did you ever see anybody become
14 unconscious?

15 A. No.

16 Q. Did you ever assist any of the
17 participants?

18 A. No.

19 Q. After the new frame was constructed in
20 late August of 2008, I believe it was your
21 testimony that the first ceremony conducted was the
22 one conducted by Mr. Ray?

23 A. **I think there was two sweat lodges before
24 his after we built it.**

25 Q. Okay. And with respect to all of the

1 ceremonies facilitated by somebody other than
2 Mr. Ray in the new frame, and using the various
3 blankets and the tarps, did you ever observe
4 anybody vomit?

5 A. **No, I did not.**

6 Q. Did you ever observe anybody faint?

7 A. No.

8 Q. Did you ever observe anybody frothing at
9 the mouth?

10 A. No.

11 Q. Did you ever observe anybody become
12 combative?

13 A. No.

14 Q. Did you ever observe anybody with eyes
15 rolling in the back of their head?

16 A. No.

17 Q. Did you ever observe anybody appear to
18 become tensed up without being able to move?

19 A. No.

20 Q. Did you ever observe anybody with a
21 vacant stare in their eyes?

22 A. No.

23 Q. Did you observe anybody become
24 unconscious?

25 A. No.

1 Q. Did you ever render assistance to any of
2 those participants in those ceremonies facilitated
3 by somebody other than Mr. Ray?

4 A. **No, I did not.**

5 Q. With respect to all of the sweat lodges
6 and ceremonies conducted at Angel Valley in 2007,
7 who was it who supervised the building or the
8 putting together of the sweat lodge itself?

9 A. **The very first sweat lodge we put
10 together, we had a memo how to do it. And then
11 Gary Palisch would come down every once in a while
12 to make sure everything was going good. Basically,
13 it was Debbie and I that built it and put it
14 together. He would just check on us every once in
15 a while the first couple months.**

16 Q. Is that true, then, for all of the
17 ceremonies conducted at Angel Valley in 2007?

18 A. **Not all of them. No. Just the first
19 two.**

20 Q. And then after that when you and Debbie
21 did it?

22 A. **We just covered them up. Nobody really
23 came down and checked on us.**

24 Q. And is that true, then, for the
25 subsequent sweat lodges that you put together?

1 A. **That's correct.**

2 Q. In other words, the person facilitating
3 the sweat lodge ceremony, such as Mr. Ray, is not
4 the one who puts together the sweat lodge?

5 A. **No. Not at all.**

6 Q. And for the other ceremonies that were
7 conducted at Angel Valley, then, was it Angel
8 Valley or the person facilitating the ceremony that
9 put together the sweat lodge?

10 A. **Angel Valley.**

11 Q. You were asked a question or two from
12 Mr. Li about Gary Palisch.

13 A. **Yes.**

14 Q. Did you know him before 2007?

15 A. **No.**

16 Q. In 2007, in response to a question from
17 Mr. Li, you said that, talking specifically about
18 people vomiting in Mr. Ray's ceremony in 2007, did
19 Mr. Palisch -- did Gary Palisch tell you that was
20 normal?

21 A. **He told me we're going to see some things
22 that -- what did he say? No. He did not say that
23 was normal. But we're going to see some things
24 that you wouldn't normally see at other sweat
25 lodges.**

1 **Can I elaborate just a little bit?**

2 Q. Sure.

3 A. **That was the very first sweat lodge that**
4 **we had encountered. We didn't know what was going**
5 **on. And afterwards -- you know -- we went to Gary**
6 **and go, what's going on here? Why is it like this?**

7 **And he said that you're going to see**
8 **things with Mr. Ray that you're not going to**
9 **normally see with other groups.**

10 Q. And did you find that to be true
11 throughout your time at Angel Valley?

12 A. **Very much so. Yes.**

13 Q. I'm going to go through some of these
14 photos that Mr. Li showed you. I'm going to start
15 by putting up on the overhead -- this is
16 Exhibit 855.

17 Do you recall seeing that when Mr. Li
18 showed that to you?

19 A. **Yes, I do.**

20 Q. You talked about photographs that your
21 wife took.

22 A. **Yes.**

23 Q. Do you know if this is a photograph your
24 wife took?

25 A. **I'm not sure.**

1 Q. You were shown photographs that you did
2 not recognize as those taken by your wife?

3 A. **Uh-huh. You know, Anita had the camera**
4 **for a while, too. She could have taken a bunch of**
5 **those pictures too.**

6 Q. Did you know a participant in 2008 named
7 Cynthia Manner?

8 A. **No. The name isn't recognizable.**

9 Q. Let me ask you specifically. The lady
10 that is shown in this picture --

11 A. **Uh-huh.**

12 Q. -- do you recall her name?

13 A. **I don't know her name. No.**

14 Q. But do you recognize her?

15 A. **Yes, I do.**

16 Q. And tell the jury how you recognize her.

17 A. **Well, she was part of the sweat lodge in**
18 **'07, and then she was there in '08 too. So I**
19 **remember she was part of the Dream Team members in**
20 **'08, I think.**

21 Q. Do you know in 2008 whether or not this
22 lady went inside Mr. Ray's ceremony?

23 A. **I don't think so.**

24 Q. Why don't you think so?

25 A. **Because she had the T-shirt on, and I**

1 **think she was holding vigil outside.**

2 Q. Do you recall this lady specifically from
3 2007?

4 A. **Yes.**

5 Q. And tell the jury what you recall about
6 her.

7 A. **That's the one that cramped up so bad**
8 **that she couldn't release any of her arms, and we**
9 **took her to the showers.**

10 Q. And how long was it that you observed her
11 in 2007 cramped up?

12 A. **30 to 45 minutes, I would say. Because**
13 **we tried to get her to relax and loosen up, give**
14 **her some water there. And somebody came by after a**
15 **while and said he was a doctor, and we need to take**
16 **her to the showers.**

17 Q. Did you see her again in 2007?

18 A. **Yes, I did.**

19 Q. Do you recall when you saw her again?

20 A. **The next day.**

21 Q. And how did she look then?

22 A. **She looked much better. She was upright**
23 **and walking and eating and talking.**

24 Q. You were asked some -- actually, while we
25 have this photograph up, let me zoom in and see if

1 I can -- do you know, Mr. Mercer, by the way, what
2 time these photos were taken?

3 A. **Well, it would be after the sweat lodge;**
4 **but as far as 4:00 or 5:00 o'clock, I'm not sure.**
5 **No.**

6 Q. Do you know how much time after the sweat
7 lodge the various photos that you've seen were
8 taken?

9 A. **Can you repeat that, please.**

10 Q. In 2008 the ceremony ended.

11 A. **Uh-huh.**

12 Q. And do you know how much time then passed
13 from the end of the ceremony until these various
14 photographs were taken?

15 MR. LI: Lacks foundation. He didn't take the
16 photographs.

17 THE COURT: If you can answer that, you may.
18 If you have personal knowledge of that.

19 THE WITNESS: I saw my wife with the camera
20 about a half hour afterwards.

21 Q. BY MS. POLK: And for you and your wife
22 in 2008, for that first half hour after Mr. Ray's
23 ceremony ended, what were you doing?

24 A. **Assisting people that were -- that seemed**
25 **to be in distress.**

1 MR. LI: Objection, Your Honor. Move to
2 strike.
3 THE COURT: Sustained.
4 **Q.** BY MS. POLK: Do these photographs
5 accurately depict for you what you saw within the
6 first hour, within the first half hour after
7 Mr. Ray's ceremony in 2008 ended?

8 MR. LI: Objection. Leading.
9 THE COURT: Overruled.

10 You may answer that.

11 THE WITNESS: No.

12 **Q.** BY MS. POLK: And why not?

13 **A.** **Because right after the sweat lodge was**
14 **over, and the first half hour, we were working on**
15 **people that needed our assistance. We were pulling**
16 **them out, getting them water, trying to get fluid**
17 **into them, talking to them. You know. I mean,**
18 **there was two ladies there that didn't know their**
19 **names and --**

20 MR. LI: Objection. Move to strike as
21 narrative.

22 THE COURT: Sustained.

23 MR. LI: And, Your Honor, there were many,
24 many pictures taken. And I object to the form of
25 this question.

1 THE COURT: I'm going to allow you some brief
2 recross in that limited area.

3 But you may continue, Ms. Polk.

4 **Q.** BY MS. POLK: Do you recognize any of the
5 people in this photograph that's up on the
6 overhead?

7 **A.** **Well, not their faces. But that lady**
8 **with the blue shirt -- that's the one I really**
9 **recognize.**

10 **Q.** And I zoomed in to the lower right
11 corner. Do you have any recollection today of the
12 person who seems to have something over their head?

13 **A.** **No.**

14 **Q.** Let me zoom in to a different part of
15 this photograph. Is that you?

16 **A.** **Yeah. That's me.**

17 **Q.** Do you know what you were doing?

18 **A.** **I'm sure I was talking.**

19 **Q.** Do you see this right here?

20 **A.** **Yes.**

21 **Q.** Do you know what that is?

22 **A.** **That looks like a lady laying on the**
23 **ground.**

24 **Q.** Do you have any recollection today as to
25 what her condition was?

1 MR. LI: Objection. Form of the question.

2 THE COURT: Overruled.

3 You may answer that.

4 THE WITNESS: No.

5 **Q.** BY MS. POLK: I'm going to put up on the
6 overhead Exhibit 841. Zoom back out.

7 This is one of the photographs that
8 Mr. Li showed you?

9 **A.** **Yes.**

10 **Q.** And date 41. Do you recognize this to be
11 a photograph that your wife took?

12 **A.** **I'm not sure if it's the one that she**
13 **took or not. I see a lot of pictures, so I'm not**
14 **sure.**

15 **Q.** I want to ask you a question specifically
16 about this log. Do you know how that log -- did
17 you put that log there?

18 **A.** **No. That was there.**

19 **Q.** And in 2008 was that log there
20 permanently?

21 **A.** **Yeah. It was, like, a spot to sit down.**

22 **Q.** Do you know if that log was there in
23 2009?

24 **A.** **Yes.**

25 MR. LI: Objection. Lack of foundation.

1 THE COURT: That was a yes or no at that
2 point. Sustained unless there is follow up on it.

3 **Q.** BY MS. POLK: I'm going to put up on the
4 overhead Exhibit 144.

5 Do you see in Exhibit 144 a log?

6 **A.** **Yes, I do.**

7 **Q.** This is a yes or no question. Do you
8 know if that's the same log in Exhibit 144 as the
9 log that we just looked at from the photograph
10 in 2008?

11 **A.** **Yes, I do.**

12 **Q.** And how do you know that?

13 **A.** **Because I've sat on that log many, many**
14 **times. And you get to the know the parts that are**
15 **sticking up, so you don't want to sit on that part.**

16 MR. LI: No objection, Your Honor.

17 **Q.** BY MS. POLK: Do you know if the log
18 in 2009 was in the same place that it was in 2008?

19 **A.** **I believe so.**

20 **Q.** And let me go back to, then, Exhibit 841.
21 Are you able to tell the jury
22 approximately how much distance there is between
23 the log and the sweat lodge?

24 **A.** **Approximately 50 or 60 feet.**

25 **Q.** And where I pointed right here to the

1 left of the screen, is that the entrance to the
2 sweat lodge?

3 **A. Just about. Yeah. Another few feet over**
4 **to the entrance. It's probably right about here.**
5 **No. Right there.**

6 **Q.** The water that we see in this
7 photograph -- do you know where that water came
8 from?

9 **A. It looks -- yeah. From the hoses.**

10 **Q.** In 2009 water was used?

11 **A. That's correct.**

12 **Q.** And do you recall in 2009 how much water
13 was on the ground after the sweat lodge ceremony
14 was over?

15 **A. Quite a bit. Quite a bit like that.**
16 **There was puddles all over.**

17 **Q.** Let me zoom in on this photograph. Do
18 you know who that lady is right there?

19 **A. No, I do not.**

20 **Q.** Do you have any recollection today of
21 that lady from 2008?

22 **A. No, I do not.**

23 MR. LI: Ms. Polk, what exhibit is that?

24 MS. POLK: 841.

25 **Q.** I want to ask you about on the right side

1 of this photograph. Do you know who that person in
2 the green shorts and the pink top is?

3 **A. I don't know her name. No.**

4 **Q.** Do you have any recollection of her
5 today?

6 **A. Vaguely.**

7 **Q.** What do you recall?

8 MR. LI: Objection, Your Honor. "Vaguely."
9 Foundation.

10 THE COURT: Overruled.

11 You may answer.

12 THE WITNESS: I just remember that she was
13 laying in the dirt and she was -- that she wasn't
14 feeling so well. And that's pretty much all I
15 remember.

16 **Q.** BY MS. POLK: Did you render any
17 assistance to her?

18 **A. Not that I know of. I might have. I**
19 **helped so many different people, I don't know. And**
20 **I don't know who they are either.**

21 **Q.** In 2008 were there tarps on the ground
22 for participants to lie down on after the ceremony?

23 **A. I don't think so. I think we just put**
24 **that up in 2009 so they wouldn't have to lay in the**
25 **dirt this time.**

1 **Q.** Do you know whose idea it was to put
2 tarps out in 2009?

3 **A. Probably Debbie and I. Or maybe -- you**
4 **know -- I'm not sure whose decision that was, but**
5 **it was probably us.**

6 **Q.** Do you recall the question from Mr. Li
7 about whether the sweat lodge ceremony was
8 conducted by JRI? Do you recall that question?

9 **A. Yes.**

10 **Q.** Do you know what JRI is?

11 **A. I would assume it's James Ray**
12 **International.**

13 **Q.** Who conducted the sweat lodge ceremony
14 in 2009?

15 **A. Who conducted it?**

16 **Q.** Who facilitated it?

17 **A. Oh. James Ray.**

18 **Q.** James Ray?

19 **A. Uh-huh.**

20 **Q.** And who facilitated the -- conducted the
21 ceremony in 2008?

22 **A. James Ray.**

23 **Q.** And who conducted or facilitated -- who
24 was the pourer, then, in 2007 for Mr. Ray's
25 ceremony?

1 **A. James Ray.**

2 **Q.** I'm going to put up on the overhead
3 Exhibit 852. I'm going to zoom in.

4 Do you know who that lady is in the pink
5 suit?

6 **A. No. I do not know her name.**

7 **Q.** Do you have any recollection today of
8 that lady?

9 MR. LI: Your Honor, this has actually been
10 asked and answered that he doesn't have any
11 recollection.

12 THE COURT: Overruled.

13 You may answer that.

14 THE WITNESS: Specifically her, no. I can't
15 say that I remember her.

16 May I elaborate just a little bit?

17 **Q.** BY MS. POLK: Yes.

18 **A. You know, there's so many people, and we**
19 **did so many different sweat lodges that -- you**
20 **know -- I never got to know the people personally.**
21 **So I'm -- you know -- I don't -- it's hard to**
22 **recall these people and what happened to each one**
23 **of them because -- you know -- I didn't really have**
24 **much contact with them except for the sweat lodges.**

25 **Q.** I understand.

1 I'm going to put up on the overhead 869.
2 Does that appear to you to be the same
3 lady as in the photograph that was just up there --
4 852?

5 **A. Yes, it does.**

6 **Q.** And I want to ask you, Mr. Mercer, in
7 this photograph what is along the outside of the
8 sweat lodge?

9 **A. That is the big brown deal, and then we**
10 **put rocks on the bottom of it so no air will get**
11 **through.**

12 **Q.** So no what will get through?

13 **A. No air. We wanted to keep it sealed.**

14 **Q.** What kind of rocks are those?

15 **A. Most likely lava rocks. But they could**
16 **be some other kind of rocks too that were just**
17 **laying close. Just something heavy to put on it.**

18 **Q.** Did you put rocks around -- well, tell
19 the jury where the rocks are with respect to the
20 sweat lodge.

21 **A. Well, usually we piled the rocks up over**
22 **here on this side, but those are the used rocks**
23 **that we don't use. So these that we use for**
24 **holding down the tarp are just usually placed**
25 **around the sweat lodge. You know, they're heavy so**

1 **we don't want to carry them too far so we can roll**
2 **them right back onto it.**

3 **Q.** At what intervals did you place the rocks
4 on the sweat lodge?

5 **A. There was no set intervals. We just put**
6 **them where it would hold the tarp down.**

7 **Q.** Did you put them all around the sweat
8 lodge?

9 **A. Yes.**

10 **Q.** If a person from the inside wanted to get
11 out, would those rocks prevent somebody from
12 pushing their way out?

13 **A. No.**

14 **Q.** I'm going to put up on the overhead
15 Exhibit 853.

16 First of all, do you recall a question
17 about seeing a tarp in this photograph?

18 **A. Yes, I do.**

19 **Q.** And specifically a question about how the
20 tarp was layered with the blankets?

21 **A. Yes.**

22 **Q.** Did you layer tarps in between blankets
23 when you built your sweat lodges?

24 **A. No.**

25 **Q.** Explain -- is this a tarp or a blanket?

1 **A. That could be a blanket. It's not quite**
2 **shiny, so that could be one of those blue moving**
3 **blankets.**

4 **Q.** And what about this?

5 **A. That's a tarp.**

6 **Q.** What is this hole?

7 **A. Well, see, that's the door. I made the**
8 **door that year out of big blankets instead of the**
9 **sleeping bags I used before.**

10 **Q.** Are there -- when it's closed, my
11 question is, this is obviously a blanket on top of
12 a tarp? ?

13 **A. Yes.**

14 **Q.** And why?

15 **A. Because that's the door. And the door**
16 **gets slipped open on top of the tarps.**

17 **Q.** Okay. This is a photograph from 2008.
18 And I want to ask you a question specifically about
19 how high the sweat lodge is, how tall.

20 **A. Uh-huh.**

21 **Q.** Can you describe for the jury how -- have
22 you been inside the sweat lodge ever?

23 **A. Many times.**

24 **Q.** And can you stand up in it?

25 **A. Not at all.**

1 **Q.** Would you just stand up and show the
2 jury, at the tallest part of the sweat lodge how
3 tall is it.

4 **A. I would say it would come to right about**
5 **here. Because I always have to bend down to do**
6 **stuff in there. So -- you know -- there was a**
7 **little bit -- about to my shoulder, I would say.**

8 **Q.** And what part of the sweat lodge is it to
9 your shoulder?

10 **A. Just the middle part where you see this**
11 **high area right here. But other than that, it's**
12 **just a crawling space.**

13 **Q.** How low, then, do the sides of the sweat
14 lodge get?

15 **A. I would guess the lowest part would be**
16 **where that door is. You know, a few parts might**
17 **dip just a little bit. But -- you know -- I don't**
18 **think it got much lower than this top section of**
19 **the door.**

20 MR. LI: What exhibit number?

21 MS. POLK: 853.

22 MR. LI: Thank you.

23 THE COURT: Ms. Polk, it is about 90 minutes.
24 Can we take a recess?

25 MS. POLK: Yes. Thank you.

1 THE COURT: Ladies and gentlemen, please
2 remember the admonition. Please be reassembled
3 at -- oh, say, in about 20 minutes.

4 And, Mr. Mercer, remember that rule of
5 exclusion. And you are excused at this time as
6 well.

7 We are in recess. Thank you.

8 (Recess.)

9 THE COURT: The record will show the presence
10 of the defendant, Mr. Ray; the attorneys, the jury.
11 And Mr. Mercer is on the witness stand again.

12 Ms. Polk.

13 MS. POLK: Thank you, Your Honor.

14 Q. Mr. Mercer, I'm going to put up on the
15 overhead Exhibit 855.

16 You've seen that a couple of times now?

17 A. Yes, I have.

18 Q. I'm going to direct your attention to
19 this over here. Will you tell the jury what that
20 is.

21 A. That's a wood pile for the natural wood
22 that we use for the sweat lodges.

23 Q. You can see it and I can see it, but the
24 jury can't see it.

25 A. Oh. Oh.

1 Q. Okay. We'll try again.

2 Will you tell the jury what this is over
3 here.

4 A. That is a wood pile that we would use for
5 the sweat lodges.

6 Q. How long was that wood pile -- well, let
7 me ask you this: In 2007 did you take wood from
8 there?

9 A. Yes, I did.

10 Q. In 2008 did you take wood from there?

11 A. Yes.

12 Q. And in 2009 did you take wood from there?

13 A. No.

14 Q. For Mr. Ray's sweat lodge ceremony
15 in 2008, did you take wood from there?

16 A. Yes.

17 Q. And for ceremonies not conducted by
18 Mr. Ray in 2008, did you take wood from there?

19 A. Yes.

20 Q. I'm going to zoom in and ask you if
21 you'll tell the jury what types of wood are in that
22 pile.

23 A. It looks like there's some regular tree
24 wood, and then there's some planks here that looks
25 like some of that construction wood.

1 Q. And it's your testimony that that wood
2 was used for sweat lodge ceremonies not facilitated
3 by Mr. Ray?

4 A. That's correct.

5 Q. I'm going to put up on the overhead
6 Exhibit 846.

7 Do you know if this is a photograph taken
8 by your wife?

9 A. I can't say for sure if she took it or if
10 someone else took it.

11 Q. For the photographs taken by your wife
12 in 2008 -- let me rephrase the question.

13 In 2008 immediately following the end of
14 Mr. Ray's ceremony, were you aware of what your
15 wife was doing?

16 A. Yes.

17 Q. Tell the jury what she was doing.

18 A. She was assisting people in and out -- or
19 out of the sweat lodge and getting them water and
20 fruit and whatever anybody needed.

21 Q. Do you know when your wife began taking
22 photographs?

23 A. I would say it would be a half hour or 45
24 minutes afterwards.

25 Q. This photograph that we see, do you know

1 if that is how the participants looked immediately
2 following Mr. Ray's ceremony in 2008?

3 A. Yes. Some of them.

4 Q. And describe generally, then, in 2008,
5 after Mr. Ray's ceremony, how did it look?

6 MR. LI: Objection, Your Honor. Form of the
7 question. It's going to elicit --

8 THE COURT: Sustained.

9 Q. BY MS. POLK: I'm going to put up on the
10 overhead Exhibit 868, which is another photograph
11 after Mr. Ray's ceremony in 2008.

12 Did you know who this lady was?

13 A. I don't know her name, but I do know the
14 lady.

15 Q. How do you know her?

16 A. Because that is the one that I would -- I
17 was working with and she didn't recall who she was.

18 Q. How long were you with her?

19 A. 45 minutes.

20 Q. From the end of Mr. -- well, at what
21 point after Mr. Ray ended his ceremony was your
22 attention drawn to this lady?

23 A. Probably about a half hour afterwards.

24 Q. And then you were with her for another
25 45 minutes after?

1 **A. Yes.**
 2 **Q.** And describe for the jury what you
 3 personally observed about this lady for those 45
 4 minutes.
 5 **A. Well, she was up and she was looking at**
 6 **you, but she was looking right through you. She**
 7 **had a huge smile on her face. She acted like she**
 8 **was about three years old. And we just kept on**
 9 **asking her if she knew who she was and where she**
 10 **was and what year it was.**
 11 **And we just sat there and just tried to**
 12 **comfort her and make sure that she was okay. Then**
 13 **after about 45 minutes, a couple of people took her**
 14 **off to her room.**
 15 **Q.** Did you see her again later that day?
 16 **A. I saw her in the dining room after that.**
 17 **And she still was -- she still didn't know who she**
 18 **was.**
 19 **Q.** That same night?
 20 **A. That same night. Yeah.**
 21 **Q.** Did you see that lady the following day?
 22 **A. Yes, I did.**
 23 **Q.** What did you observe about her then?
 24 **A. She was much better. She could talk**
 25 **and -- well, she could talk before, but she could**

1 **formulate sentences and she was alert and she could**
 2 **look at you. And she thanked me for being with**
 3 **her. She's a very nice lady.**
 4 MR. LI: Counsel, could I get that exhibit
 5 number.
 6 MS. POLK: 868.
 7 **Q.** I'm going to put up on the overhead
 8 Exhibit 845, which is another exhibit from
 9 Mr. Ray's ceremony in 2008.
 10 Do you recognize anybody in that
 11 photograph?
 12 **A. Well, just the general people. Yeah.**
 13 **Not specifically, except for this lady here that**
 14 **the other attorney pointed out to us.**
 15 **Q.** And I want to ask you to compare what you
 16 see in this photograph with what you saw in 2007.
 17 MR. LI: Objection, Your Honor. Form of the
 18 question.
 19 THE COURT: I think -- there hasn't actually
 20 been a question yet, I don't think.
 21 Ms. Polk, please continue.
 22 **Q.** BY MS. POLK: My question is, does this
 23 photograph look different from what you saw at the
 24 end of Mr. Ray's ceremony in 2007?
 25 **A. No.**

1 **Q.** And it looks the same?
 2 **A. Yeah. The same scene. Yeah.**
 3 **Q.** And how so?
 4 **A. People laying on the ground. Other**
 5 **people walking around. Some people are real happy**
 6 **and some people weren't so happy.**
 7 **Q.** I'm going to put up on the overhead
 8 Exhibit 849.
 9 You just talked about some people looking
 10 happy. Is that what you see in this photograph?
 11 **A. She looks pretty good to me.**
 12 **Q.** And then if we zoom in to the lower
 13 right, do you have any recollection of this lady?
 14 **A. No. Maybe if I saw her face.**
 15 **Q.** And then I want to draw your attention to
 16 what's in the back.
 17 **A. Uh-huh.**
 18 **Q.** Do you have any recollection of that
 19 lady?
 20 **A. Not if I don't see her face.**
 21 **Q.** Let me actually approach and give you
 22 exhibits 859 and 868.
 23 **A. Okay.**
 24 **Q.** Do you recognize whether or not you're
 25 seeing the same groups of people?

1 **A. Yeah. You know, it looks like it,**
 2 **because she's got the dark hair and they're in the**
 3 **same position as they are in this photo. They're**
 4 **in the same spot and the two same girls are under.**
 5 **Q.** Okay. Let's put up on the overhead --
 6 I'm going to put back up on the overhead
 7 Exhibit 868.
 8 And you've already testified that that's
 9 the lady that you assisted in 2008?
 10 **A. That's correct.**
 11 **Q.** And then I'm going to put up on the
 12 overhead Exhibit 859 and have you explain to the
 13 jury what you recognize to be the same.
 14 **A. Well, these people here and in that other**
 15 **photograph are in the same position, are in the**
 16 **same spot, on the land there. And I can tell that**
 17 **just by what's around them in both pictures. And**
 18 **then these two ladies here are the same two that**
 19 **we're looking at in the other photo.**
 20 **Q.** I've just zoomed in for you.
 21 **A. Uh-huh.**
 22 **Q.** Does that help you?
 23 **A. Yes. Because this lady is one of the**
 24 **Dream Team ladies. She was always outside the**
 25 **sweat lodge. And this one -- I'm not sure who she**

1 **is. But yeah. They are the same two that were in**
2 **the other photo.**

3 **Q.** I'm going to put up on the overhead 864,
4 another photograph that Mr. Li showed you.

5 Do you know who this gentleman is?

6 **A. I don't know his name. No.**

7 **Q.** Do you recognize him from 2008?

8 **A. You know, I can't say right now if I**
9 **recognize -- if remember him being there in 2008.**

10 **Q.** Do you know who this lady is?

11 **A. That's the same lady that was on the**
12 **outside of the sweat lodges the other few years. I**
13 **don't know her name either. But I remember her**
14 **because she was there all three years.**

15 **Q.** Do you know what that man is doing with
16 the feet?

17 **A. Looks like he's just rubbing her feet,**
18 **trying to get -- looks like he's rubbing her feet.**

19 **Q.** Do you have any recollection today what
20 this scene was about?

21 MR. LI: Objection to the form of the
22 question, Your Honor.

23 THE COURT: Overruled.

24 You may answer that.

25 THE WITNESS: It looks like the same scene

1 with these two ladies, talking to the one that was
2 incoherent.

3 **Q.** BY MS. POLK: And by "the same scene,"
4 you mean referring back to Exhibit 859?

5 **A. Yes. It looks like the same -- that**
6 **they're in the same area. You just don't see the**
7 **guy there rubbing her feet. He probably hadn't**
8 **shown up yet.**

9 **Q.** I'm going to put up on the overhead
10 Exhibit 865, another photograph that Mr. Li showed
11 you.

12 Do you recognize anybody in this
13 photograph from 2008?

14 **A. The two girls standing at the top here.**
15 **One is Anita and one is Debbie, my wife. But the**
16 **participants, no. I mean, I recognize this lady**
17 **because I've seen her picture so many times. But I**
18 **couldn't say that I remember her.**

19 **Q.** And we've seen a picture of a lady on the
20 ground with green shorts?

21 **A. That's correct.**

22 **Q.** Do you know, Mr. Mercer, how long that
23 lady in the green shorts laid there in 2008?

24 **A. No, I don't.**

25 **Q.** Do you have any recollection of her

1 today?

2 **A. No.**

3 **Q.** I'm going to put up on the overhead 876.
4 Do you recognize that lady?

5 **A. No, I don't.**

6 **Q.** She has a smile on her face. Would you
7 agree?

8 **A. Yes. She looks like she's happy.**

9 **Q.** Do you have any recollection of this
10 person from 2008?

11 **A. No. Not without seeing her face or his**
12 **face.**

13 **Q.** And do you know where inside the sweat
14 lodge this lady sat during Mr. Ray's ceremony?

15 **A. No.**

16 **Q.** Do you know where inside the sweat lodge
17 that person sat during Mr. Ray's ceremony?

18 **A. I would have no idea.**

19 **Q.** Do you have any idea where any of the
20 people depicted in the photographs that you've
21 seen -- where any of them sat in the sweat lodge
22 for Mr. Ray's ceremony?

23 **A. No.**

24 **Q.** And I'll put up on the overhead
25 Exhibit 877, a couple of ladies with smiles. And I

1 just want to zoom in on that group right there --

2 **A. Uh-huh.**

3 **Q.** Again the lady in the green shorts.

4 **A. Yeah.**

5 **Q.** She appeared to have changed positions
6 from prior photographs?

7 **A. Yeah. It looks like it. She was laying**
8 **on her side before.**

9 **Q.** I'm going to put up on the overhead
10 Exhibit 857, that Mr. Li showed you, of a lady who
11 has got her arms up, happy.

12 **A. Uh-huh.**

13 **Q.** Do you recall that photograph?

14 **A. Yes, I do.**

15 **Q.** Do you recall that lady from 2008?

16 **A. No, I don't.**

17 **Q.** Let me just draw your attention to the
18 right side of the photograph.

19 **A. Uh-huh. That's the lady that I worked on**
20 **again, or that I sat with.**

21 **Q.** Where do you see her in that photograph?

22 **A. Here's her head right here.**

23 **Q.** Do you see somebody else who is lying
24 down in the background?

25 **A. Yeah, I do. Right here.**

1 Q. And then if we go to the other side of
2 this photograph, do you see a lady in the
3 foreground?

4 A. Yes.

5 Q. Do you know who that was?

6 A. **Can't say that I know who she is.**

7 MR. LI: I'm sorry. Which exhibit number is
8 this?

9 MS. POLK: 857.

10 Q. The scene in this photograph from 2008 --
11 is that similar to what you saw in 2007 after
12 Mr. Ray's sweat lodge ceremony?

13 A. Yes.

14 Q. And this scene that you see in this
15 photograph -- is it similar to what you saw in 2009
16 after Mr. Ray's sweat lodge ceremony?

17 A. Yes.

18 Q. And how so?

19 A. **People laying around on the ground. Some**
20 **people were up feeling really good, and others were**
21 **laying out. And there was some people in various**
22 **stages of distress, I would say.**

23 Q. Have you ever seen anything like that for
24 the ceremonies in 2007 that were facilitated by
25 somebody other than Mr. Ray?

1 MR. LI: Objection, Your Honor. Asked and
2 answered many times.

3 THE COURT: Overruled.

4 You may answer that.

5 THE WITNESS: Not at all.

6 Q. BY MS. POLK: Have you ever seen anything
7 like this for the ceremonies in 2008 facilitated by
8 individuals other than Mr. Ray?

9 A. No.

10 Q. And for this other ceremony in 2009 that
11 you were at not facilitated by Mr. Ray, did you
12 ever see anything like this?

13 A. **Nothing like that at all. No.**

14 Q. And how about just the image of the
15 person coming out celebrated? Do you --

16 A. **You see that. Yeah.**

17 Q. You see that?

18 A. **Uh-huh.**

19 Q. But what don't you see?

20 A. **You don't see --**

21 MR. LI: Objection, Your Honor.
22 Argumentative, asked and answered.

23 THE COURT: Overruled.

24 You may answer that.

25 THE WITNESS: What you don't see is big

1 puddles of water and people laying in the dirt and
2 just the general mess of the whole place too. It
3 usually didn't get quite as messy.

4 Q. BY MS. POLK: In 2009 -- October of 2009
5 after Mr. Ray's ceremony, how many minutes passed
6 before you realized something was really wrong?

7 A. **Maybe five or ten.**

8 Q. And during that five or ten minutes, did
9 you see anybody coming out happy and celebrating?

10 A. **Oh. Well, they -- yeah. Some people**
11 **came out very empowered. And other people came out**
12 **on their faces.**

13 Q. For 2008 after Mr. Ray's ceremony, were
14 there people who were in distress that are not
15 depicted in these photographs?

16 MR. LI: Objection, Your Honor. Move to
17 strike the term "distress."

18 THE COURT: Sustained.

19 Q. BY MS. POLK: For 2008 after Mr. Ray's
20 sweat lodge ceremony, were there people that you
21 assisted who are not seen in these photographs?

22 A. **Yes. That's correct. There was another**
23 **lady that was like the one that didn't know her**
24 **name or couldn't tell you what year it was or**
25 **anything. There was two ladies like that.**

1 **And then during the sweat lodge, there**
2 **was a gentleman that got a bit irate and wanted to**
3 **get his girlfriend out because he thought she was**
4 **going to die.**

5 **He started screaming, you're going to**
6 **die. I want you out of there.**

7 **So we really had to wrestle him away from**
8 **the sweat lodge several times because he would try**
9 **to open up the back of the sweat lodge. And -- so**
10 **then he'd go, oh. No, no. I'm okay. I'm okay.**

11 **And then we went off, and then he'd take**
12 **off to the other side of the sweat lodge to try to**
13 **open it up and get his girlfriend out of there**
14 **because he was afraid she was going to die in**
15 **there.**

16 MR. LI: Objection, Your Honor. Move to
17 strike as to what the other person was thinking.

18 THE COURT: Sustained and granted.

19 Q. BY MS. POLK: What year did you see this
20 gentleman that you just described?

21 A. **That was in '08.**

22 Q. Do you recall at what round?

23 A. **No. I would say it was about halfway**
24 **through, three quarters of the way through.**

25 Q. And what drew your attention to that man?

1 **A. Because these two James Ray ladies were**
2 **wrestling with him, and they asked me for help.**

3 **Q.** And what did you do to assist the James
4 Ray ladies?

5 **A. I just tried to hold the guy down. We**
6 **sat on him, and we just tried to keep him from**
7 **opening up the back of the sweat lodge.**

8 **Q.** And what was he saying? You sat on him?

9 **A. I sat on him. Yeah.**

10 **Q.** And what was he saying as you did that?

11 **A. He said that he wanted to get his**
12 **girlfriend out of that sweat lodge because he was**
13 **afraid she was going to die. And he kept on saying**
14 **that. He had to get her out. He had to get her**
15 **out.**

16 **Q.** How long did you wrestle with that
17 gentleman?

18 **A. About half an hour or so.**

19 **Q.** What did you observe? What did you
20 personally observe about that gentleman's
21 condition?

22 MR. LI: Objection, Your Honor. Form of the
23 question.

24 THE COURT: Overruled.

25 You may answer that.

1 THE WITNESS: He seemed to be irate, out of
2 his mind. And we couldn't reason with him. And
3 then we saw him two or three hours later, and he
4 didn't remember a thing.

5 **Q.** BY MS. POLK: Did you talk to him two to
6 three hours later?

7 **A. Yes, I did.**

8 **Q.** Mr. Li asked you if the other sweat lodge
9 ceremonies that you had assisted were about 30
10 minutes shorter than Mr. Ray's.

11 Do you remember that question?

12 **A. Yes, I do.**

13 **Q.** How long was the average ceremony not
14 facilitated by Mr. Ray?

15 **A. About an hour.**

16 **Q.** And how long were Mr. Ray's?

17 **A. Two hours.**

18 **Q.** So is that 30 minutes shorter?

19 **A. No. That seems like an hour shorter to**
20 **me.**

21 **Q.** And during the average hour of a ceremony
22 conducted by somebody other than Mr. Ray, how much
23 of that time is with the door open?

24 **A. Probably a quarter.**

25 **Q.** And with Mr. Ray's ceremonies, how much

1 time of the ceremony is the door open for?

2 **A. Well, his went longer, so he had more**
3 **doors open. But as far as averages go, it would be**
4 **about the same, about a quarter of the time.**

5 **Q.** You were asked some questions about using
6 fewer rocks for Mr. Ray's ceremony in 2009. And
7 you agreed that you had said you used fewer rocks.
8 What were you comparing it to? Fewer rocks than
9 what?

10 **A. Well, usually when he called for rocks,**
11 **it was in the seven to ten range.**

12 **Q.** Per round?

13 **A. Per round. And -- maybe a few more. And**
14 **then a couple of times during that last sweat lodge**
15 **in '09, he only asked for four. And that seemed**
16 **just a little unusual.**

17 **Q.** When you said "fewer rocks," whose sweat
18 lodge ceremonies were you comparing it to?

19 **A. To his.**

20 **Q.** Were you comparing it to ceremonies
21 conducted or facilitated by individuals other than
22 Mr. Ray?

23 **A. No.**

24 **Q.** And on average, how many rocks did people
25 other than Mr. Ray use?

1 **A. If -- four, five or six.**

2 **Q.** I'm going to hand you Exhibit 631,
3 Mr. Mercer. Just have you look at that for a
4 moment.

5 **A. I recognize this document.**

6 **Q.** I'm also going to hand you 631 and ask if
7 you recognize that.

8 **A. Yes, I do.**

9 **Q.** What is Exhibit 631?

10 **A. The one that you gave me here is the**
11 **interview in the hospital.**

12 **Q.** And the other one was 6 -- what did I
13 give you? 681?

14 **A. Yeah. 681.**

15 **Q.** And where did that interview occur?

16 **A. That one occurred at Angel Valley the day**
17 **after the sweat lodge.**

18 **Q.** With respect to the interview that
19 occurred at the hospital, do you recall what time
20 that was?

21 **A. It was in the morning.**

22 **Q.** In the morning at the hospital?

23 **A. Oh, no. At the hospital was in the**
24 **evening after the sweat lodge. Probably 11:00,**
25 **12:00 o'clock at night.**

1 Q. And do you recall how long that interview
2 lasted for?

3 A. **20 minutes or so.**

4 Q. Mr. Li asked you if you gave a full and
5 complete and accurate statement to the police
6 during that interview. Did you consider that to be
7 a full and complete interview?

8 A. **No, I didn't. That's why I went and
9 talked to Detective Diskin.**

10 Q. And explain that to the jury.

11 A. **Well, when we were in the hospital, my
12 wife was rather stressed. And so was I after the
13 whole commotion and everything. And then this lady
14 officer comes in the room and just starts asking us
15 questions. And -- you know -- she told us what she
16 was doing and what was going on.**

17 **But just with her oxygen mask on and an
18 I.V. and the whole commotion over that night, you
19 know, we were still kind of in shock ourselves.**

20 Q. And Mr. Li asked you if the very first
21 thing that came to mind during that interview was
22 the wood. Do you recall that question?

23 A. **Yes, I do.**

24 Q. In terms of that interview, was that the
25 very first thing that you spoke to the detective

1 about?

2 A. **Can I look in here?**

3 Q. Yes. Please do.

4 MR. LI: Your Honor, I'm going to object to
5 the form of the question. I think there's two
6 different things that are being posited. One is
7 what was the first thing he thought about with
8 respect to about what was different, and the other
9 is just whatever other things they talked about
10 during the interview. And I think it misstates the
11 questions and the testimony.

12 THE COURT: Ms. Polk, please go ahead and
13 phrase a question.

14 Q. BY MS. POLK: Okay. Do you recall during
15 that interview what was the first thing that the
16 detective asked you about?

17 MR. LI: If the record will just reflect that
18 the witness is refreshing --

19 THE COURT: It will. That the witness is
20 reviewing the transcript right now.

21 THE WITNESS: It looks like she was wondering
22 if we were out at Angel Valley and if we had
23 participated in the James Ray sweat lodge.

24 Q. BY MS. POLK: And if I can direct your
25 attention to page 6, if you need to refresh your

1 recollection. Do you recall before speaking --

2 before mentioning the wood, do you recall talking
3 to the detective about the kiva or the frame and
4 what it was constructed of?

5 THE COURT: Again, the witness is referring to
6 the transcript.

7 Q. BY MS. POLK: And if you need to refresh
8 your recollection, please do.

9 A. **What was the question?**

10 Q. Do you recall whether before you spoke
11 about the wood, you talked about the frame and the
12 kiva and the willow sticks?

13 A. **Yes. I think so.**

14 Q. And were you able to refresh your
15 recollection as to that?

16 A. **Yeah. I don't see where I talked about
17 the wood yet.**

18 Q. Okay. Have you looked at page 6?

19 A. **Yes. I looked at page 6.**

20 Q. And do you recall speaking about the
21 construction of the sweat lodge and the kiva and
22 the willow?

23 A. **Yes.**

24 Q. And then do you recall speaking about the
25 coverings and where they were stored?

1 A. **Uh-huh.**

2 Q. Before you spoke about the wood?

3 MR. LI: Your Honor, this completely misstates
4 what the transcript says. The issue was --

5 THE COURT: The objection, then, is --

6 MR. LI: It completely misstates what the
7 actual transcript says. The question was, what was
8 different about this sweat lodge ceremony from the
9 other ones, and the first thing that comes to his
10 mind is the wood.

11 This is just tell us about where you were
12 and how the sweat lodge was put together.

13 THE COURT: Sustained as to the form of the
14 question.

15 Q. BY MS. POLK: Do you recall the question
16 from Mr. Li about your discussion with the
17 detective about what was different?

18 A. **Yes.**

19 Q. And do you recall at what point in your
20 interview with the detective were you asked what
21 was different?

22 A. **No. I don't recall unless I read this
23 whole thing.**

24 Q. Do you recall discussing with the
25 detective topics other than the wood before

1 discussing what was different?

2 **A. Yes.**

3 **Q.** And today if I ask you the question, what
4 was different in 2009 with Mr. Ray's sweat lodge
5 ceremony from his prior sweat lodge ceremonies,
6 what is your answer?

7 **A. The only thing that was different was the**
8 **wood.**

9 **Q.** And how was the wood different?

10 **A. It was all construction wood.**

11 **Q.** And in previous ceremonies, what was
12 used?

13 **A. A mix of regular tree wood that we'd get**
14 **around the property and some construction wood.**

15 **Q.** Do you recall being asked about how
16 Mr. Ray conducted his ceremonies?

17 **A. Not unless I read this.**

18 **Q.** If you looked at the transcript, would
19 that refresh your recollection?

20 **A. Yes.**

21 **Q.** Let me refer you to page 9 of your
22 transcript. Why don't you take a moment to read
23 that page.

24 MR. LI: Your Honor, just for the record, the
25 man is simply reading the transcript. There are

1 pages and pages of this transcript. And he
2 describes how it's done in many different ways
3 throughout the interviews, in other interviews as
4 well.

5 THE COURT: The request was to refer to just
6 one particular page, page 9.

7 THE WITNESS: Okay.

8 **Q.** BY MS. POLK: Did you have a concern,
9 Mr. Mercer, about Mr. Ray's sweat lodge ceremonies
10 other than the issue of the wood?

11 **A. Oh, yes.**

12 **Q.** Was the wood a concern for you?

13 **A. No. Not from the beginning it wasn't.**

14 **Q.** And what was your concern about Mr. Ray's
15 sweat lodges?

16 **A. Just the way he conducted them. I mean,**
17 **it was --**

18 MR. LI: Objection. Move to strike, Your
19 Honor.

20 THE COURT: Sustained and granted.

21 **Q.** BY MS. POLK: Without telling what your
22 concern was about issues other than wood, did you
23 discuss those concerns about the detective?

24 MR. LI: Objection, Your Honor.

25 THE COURT: Sustained.

1 **Q.** BY MS. POLK: Where were you for the
2 second interview, Mr. Mercer?

3 **A. I was by the sweat lodge talking to**
4 **Detective Diskin. I was probably a few hundred**
5 **yards away.**

6 **Q.** Let me put up on the overhead
7 Exhibit 512.

8 What day was your second interview with
9 the detective?

10 **A. The day after the sweat lodge.**

11 **Q.** And we see crime scene tape up. Did you
12 ever go inside the crime scene?

13 **A. No, I did not.**

14 **Q.** Do you recall how it was that you got the
15 detective's attention?

16 **A. Yeah. We walked down to the sweat lodge,**
17 **and there were some gentlemen there. And we told**
18 **them that we didn't have an interview last night**
19 **and that I was the fire keeper and I'm sure they**
20 **wanted to talk to us.**

21 **Q.** And then what happened?

22 **A. Then he split us up and took my wife --**
23 **took me first, and then talked to my wife after**
24 **that.**

25 **Q.** Do you recall -- I'm going to put up on

1 the overhead Exhibit 140 and just see if you can
2 show the jury where you then went with the
3 detective for that interview.

4 **A. Well, the sweat lodge is here. And we**
5 **were right there.**

6 **Q.** Did you go up the road a little bit?

7 **A. Yeah. Yeah. This little road right here**
8 **going up to the Star Village there, there's just a**
9 **little path type of thing, a road you can drive on.**
10 **We were sitting right on that.**

11 **Q.** Where did you find to sit?

12 **A. We were standing by his car.**

13 **Q.** Did you sit or stand for the interview?

14 **A. I think I stood.**

15 **Q.** Do you recall where his car was parked?

16 **A. Right -- I don't know if it was his car.**

17 **But we were right by a car in that same spot right**
18 **there. We were just below that.**

19 **Q.** I'm going to put back up on the overhead
20 Exhibit 512 and direct your attention to this area
21 here.

22 Do you recall Mr. Li's questions about
23 that wood pile?

24 **A. Yes, I do.**

25 **Q.** And he played a tape. Do you recall the

1 tape he played with your voice answering some
2 questions about the wood?

3 **A. Yes.**

4 **Q.** Tell the jury where you were when that
5 tape was made.

6 **A. We were over in this direction, over
7 here, up on the hill just a little bit. That's
8 where the road goes up, and that's Star Village
9 right up here.**

10 **Q.** And were you down here by this wood pile?

11 **A. Not when we were talking. No.**

12 **Q.** And when Mr. Li asked you questions about
13 this wood, do you recall if you ever even spoke to
14 the detective about this wood pile?

15 **A. Not that I recall.**

16 **Q.** You talked about some wood in that tape?

17 **A. Yes.**

18 **Q.** Do you recall that?

19 **A. Yes.**

20 **Q.** Do you see the wood that you talked about
21 in this photograph?

22 **A. I probably pointed to the wood here and
23 then the same wood that wasn't cut up still over in
24 the pile that was just off the picture a bit.**

25 **Q.** Did you ever burn this wood for -- to

1 heat the rocks for Mr. Ray's --

2 **A. There was no reason to use this wood,
3 because this wood was sitting here in a nice pile
4 and it burns very well.**

5 **Q.** Do you know what kind of wood that is?

6 **A. This one here --**

7 **Q.** Yes.

8 **A. -- the pile?**

9 **That's the construction wood that was
10 over in the other big pile.**

11 **Q.** And do you know what sort of wood it is,
12 what type of tree?

13 **A. No.**

14 **Q.** Who would know?

15 **A. Michael Hamilton.**

16 **Q.** And do you know if that wood was -- do
17 you know if this wood was treated in any way?

18 **A. I would have no idea.**

19 **Q.** And who would know?

20 **A. Michael Hamilton.**

21 **Q.** Do you know what Mr. Hamilton did for a
22 living before he came to Angel Valley?

23 **A. I'm not sure. But I heard that he was a
24 contractor.**

25 **Q.** You had told the jury you lived in a

1 trailer on the property of Angel Valley. Do you
2 recall that?

3 **A. Yes. That's correct.**

4 **Q.** Tell the jury when it is you lived in a
5 trailer.

6 **A. We moved that trailer in there March of
7 '08.**

8 **Q.** And show the jury on Exhibit 140 where
9 you had your trailer.

10 **A. The trailer was -- it was right here by
11 the swimming hole. Because here was the garden.
12 Yeah. So right -- right there. Right there next
13 to the creek, a very nice spot.**

14 **Q.** When was the last time you lived in that
15 trailer?

16 **A. We lived there until November of '08.**

17 **Q.** During the time that you lived in that
18 trailer, how far from the creek were you?

19 **A. 150 yards maybe.**

20 **Q.** You were asked some questions by Mr. Li
21 about the ants and the bugs and, I guess, the
22 flies?

23 **A. Uh-huh.**

24 **Q.** Were those ever a problem at Angel
25 Valley?

1 **A. Well, not by our house it wasn't. No.**

2 **Q.** And what do you mean?

3 **A. Well, there would be some ants and flies
4 other places, but we never had any problem with
5 them.**

6 **Q.** Did you ever have food outside during the
7 time that you were in your trailer down by the
8 creek?

9 **A. Well, yes. Because the trailer wasn't
10 very big, and there was four or five of us
11 sometimes, so we usually ate outside.**

12 **Q.** And when you were eating outside, did the
13 ants ever crawl up on your food?

14 **A. No.**

15 **Q.** And how about the flies?

16 **A. There was a few flies every once in a
17 while. Yeah.**

18 **May I elaborate just a little?**

19 **Q.** Sure.

20 **A. We had a barbecue out there too. So
21 there was a stone barbecue that we would use that
22 was there before we even moved there -- right next
23 to us. So that would be the thing that we'd
24 barbecue on all the time. We would leave little
25 bits of food on there, and they were usually always**

1 **there when I went back to barbecue again.**

2 **Q.** So not a problem in general?

3 **A. No.**

4 **Q.** I'm going to put up on the overhead

5 Exhibit 322, which is another photograph that

6 Mr. Li showed you, and ask you if you saw any ants
7 on this fruit.

8 Do you see any ants on the fruit?

9 **A. No, I do not.**

10 **Q.** Do you see any flies on the fruit?

11 **A. No, I don't.**

12 **Q.** Do you know if on the watermelon -- do
13 you know if those are all seeds?

14 **A. They look like seeds.**

15 **Q.** Do you know if any of them could be
16 flies?

17 **A. I don't know. They could be.**

18 **Q.** Do you know, for example, what's down
19 here?

20 **A. No, I don't.**

21 **Q.** Do you know on this piece of orange what
22 that dark spot is?

23 **A. No, I don't.**

24 **Q.** And do you know in this area if those are
25 all seeds?

1 **A. I'm not sure.**

2 **Q.** Let me just zoom in and see if we can
3 see. It's a little bit closer. Look at this.

4 **A. Yeah. I don't know what that is.**

5 **Q.** Now we're asking you to be a fly expert.
6 Let me --

7 **A. I don't see any wings.**

8 **Q.** Okay. Let's look up here.

9 Do you know, for example, in that area,
10 if those are all seeds?

11 **A. They look like seeds. But -- you know --**
12 **I wouldn't want to guess.**

13 **Q.** Were you there when these photographs
14 were taken?

15 **A. No.**

16 **Q.** And guessing whether or not there's any
17 bugs on that fruit would just be a guess?

18 **A. Yes, it would.**

19 **Q.** Did you notice any change in the amount
20 of insects between 2009 when you were still on the
21 property and 2008?

22 **A. No.**

23 **Q.** From 2007 through 2009, during the time
24 that you were at Angel Valley, did you ever notice
25 any change in the number of bugs on the property?

1 **A. No.**

2 **Q.** And during that same time period, did you
3 ever notice any change in particular in the number
4 of bugs down by the area of the sweat lodge?

5 **A. Well, no -- yes and no. I mean,**
6 **wintertime comes around, and then there's no bugs.**
7 **But other than that, no.**

8 **Q.** Did you ever see any dead bugs in the
9 area of the sweat lodge?

10 **A. Not that I can recall.**

11 **Q.** Did you ever see anything that would
12 suggest to you that the area of the sweat lodge had
13 been sprayed with insecticide?

14 MR. LI: Objection. Lack of foundation. Also
15 time.

16 THE COURT: Sustained.

17 **Q.** BY MS. POLK: During 2009, when you still
18 lived on the property, did you ever see any dead
19 bugs in the area of the sweat lodge?

20 **A. No, I did not.**

21 **Q.** And did you ever see anybody spraying any
22 chemicals in the area of the sweat lodge in 2009?

23 **A. No, I did not.**

24 **Q.** Did you ever see any chemicals, any
25 pesticides of any sort, sprayed anywhere at Angel

1 Valley between 2007 and 2009?

2 **A. No, I did not.**

3 **Q.** I'm going to put back on the overhead
4 Exhibit 797.

5 Do you know when this photograph was
6 taken?

7 **A. No, I don't.**

8 **Q.** Assuming that it was taken in 2011, were
9 you at Angel Valley in 2011?

10 **A. No.**

11 **Q.** The tarps and the blankets and the big
12 brown cover for the sweat lodge -- they were stored
13 in this area?

14 **A. Yes, they were.**

15 **Q.** And after three people died in Mr. Ray's
16 sweat lodge ceremony in 2009, what happened to all
17 the materials that previously were stored in this
18 pump house?

19 **A. I'm not sure what happened to them, but**
20 **they weren't in the pump house anymore.**

21 **Q.** Did you -- during that burning ceremony
22 or prior to it, did you see something happen to
23 those coverings?

24 **A. Yes, I did.**

25 **Q.** And what did you see happen?

1 **A. I saw him taking them and putting them in**
2 **the truck and in the van.**

3 **May I elaborate just a little bit?**

4 **Q. Yes.**

5 **A. Normally Michael Hamilton wouldn't be**
6 **taking care of any of the tarps or any of the**
7 **blankets or doing any of that stuff. And then that**
8 **day, even during the burning ceremony, he was**
9 **dragging tarps around and putting them in his van.**

10 **Q. I'm going to put up on the overhead**
11 **Exhibit 871. This is another photograph from 2008**
12 **from Mr. Ray's ceremony.**

13 Does it appear to you that this man has
14 red skin?

15 **A. Yes.**

16 **Q. And I want to put up Exhibit 880.**

17 Do you see that same sort of red-colored
18 skin on these individuals?

19 **A. Yes, I do. This guy and this lady right**
20 **here. There looks to be a little bit of red patch**
21 **on this guy's back.**

22 **Q. And I'm going to put up 873.**

23 Do you see that same thing on these
24 ladies?

25 **A. Yes. Her face and her legs. And this**

1 **lady's -- not so much on this lady. But her I can**
2 **see it.**

3 MR. LI: Counsel, can you tell me which
4 exhibit number this last one is? 873?

5 MS. POLK: Yes.

6 **Q. I'm going to put up on the overhead 856.**

7 Do you see another person who is quite
8 red?

9 **A. This lady here looks pretty red, and this**
10 **guy -- it looks like he's got some red face too.**

11 **Q. I'm going to put up Exhibit 850.**

12 Same question. Do you see some people
13 who are flushed?

14 **A. Yes. The blonde lady sitting in the dirt**
15 **looks pretty red faced.**

16 **Q. And I'm going to put up Exhibit 849.**

17 Same question.

18 **A. Both of those ladies have got red faces.**

19 **Q. Were those red faces -- did you see red**
20 **faces in 2009 as well?**

21 **A. Oh, yes.**

22 **Q. And did you see red for Mr. Ray's**
23 **ceremonies?**

24 **A. Yes.**

25 **Q. And how about for ceremonies not**

1 facilitated by Mr. Ray?

2 **A. No. Not at all.**

3 **Q. You never saw people flushed and red?**

4 **A. No.**

5 **Q. Going back to the storage of the tarps in**
6 **the pump house. And I'll put up 797, understanding**
7 **it's a photograph from 2011.**

8 How far from what you thought perhaps
9 might be some rat poison granules -- how far were
10 the tarps from those granules?

11 **A. Well, we would store the tarps over here.**
12 **And on this side, where this line goes here, there**
13 **is a hole on the side. So it would be around the**
14 **hole. And then over here there was another hole**
15 **kind of behind the door.**

16 **Q. Did you ever see the tarps touching the**
17 **granules?**

18 **A. They could have.**

19 **Q. And when you picked up the tarps, did you**
20 **ever see any granules fall out of the tarps?**

21 **A. No.**

22 **Q. You were asked a question by Mr. Li about**
23 **the free will of the participants at Mr. Ray's**
24 **sweat lodge ceremonies. Do you recall that**
25 **question?**

1 **A. Yes, I do.**

2 **Q. Did you notice a difference between**
3 **Mr. Ray and how he spoke to his participants about**
4 **staying in the sweat lodge and ceremonies conducted**
5 **by facilitators other than Mr. Ray?**

6 **A. Yes.**

7 **Q. And tell the jury what that difference**
8 **was.**

9 **A. He seemed to be more pushy about staying**
10 **in the sweat lodge or coming back in. Any of the**
11 **other sweat lodges, if there was anybody that had**
12 **any problem at all, they would just stop right then**
13 **and let them cool off before they start going**
14 **again. And the door would -- sometimes a door**
15 **would stay open during a round because it was**
16 **getting too hot in there. Or if it would get --**
17 **you know -- if they started sweating or**
18 **feeling uncomfortable --**

19 MR. LI: Your Honor, narrative. Move to
20 strike.

21 THE COURT: Sustained and granted.

22 **Q. BY MS. POLK: Did you observe whether for**
23 **Mr. Ray's sweat lodge ceremonies there was a stigma**
24 **associated with getting out of his sweat lodge?**

25 MR. LI: Objection. Argumentative.

1 THE COURT: Sustained.

2 Q. BY MS. POLK: Did you ever see
3 Mr. Ray stop -- in 2009 did you ever see Mr. Ray
4 stop his ceremony to take care of a participant who
5 was having trouble?

6 A. No.

7 Q. Did you ever see in 2008 Mr. Ray stop a
8 ceremony to take care of a participant who was in
9 trouble?

10 A. No.

11 MR. LI: Objection, Your Honor. Objection --
12 THE COURT: Sustained and -- sustained.

13 Q. BY MS. POLK: Do you have Exhibit 681
14 still in front of you? It's the transcript.

15 A. Yes, I do.

16 MR. LI: Your Honor, I'm going to object to
17 how this is done, to show the witness a transcript
18 and then have him read it and then have him say
19 what it says.

20 THE COURT: Well, there's not a question yet.

21 Ms. Polk, if there's a specific question,
22 please proceed.

23 MS. POLK: There is, Your Honor. And this was
24 pursuant to 106, when Mr. Li read a passage, and
25 the Court indicated I could come to it on my

1 redirect.

2 THE COURT: Well, if we can get to the area.
3 Because I did talk about putting the full context
4 on that one excerpt.

5 MR. LI: All right.

6 Q. BY MS. POLK: Let me direct your
7 attention to page 9.

8 A. Okay.

9 Q. Let me ask you this question, Mr. Mercer:
10 Do you remember the question from Mr. Li that after
11 discussing with Detective Diskin possible rat
12 poison, that Detective Diskin said he would check
13 with the medical examiners?

14 A. Yes. I remember that.

15 Q. And let me direct your attention to
16 page 9. Do you recall whether your discussion
17 about rat poison was within the context of all the
18 various issues you testified about today here at
19 this trial?

20 MR. LI: Objection. Form of the question.

21 THE COURT: Sustained.

22 Q. BY MS. POLK: In this interview had you
23 discussed matters other than the rat poison with
24 Detective Diskin?

25 A. Yes.

1 Q. And on page 9, line 14, I'd like to read
2 to you starting on page -- on line 14.

3 Mr. Mercer -- that's you.

4 MR. LI: Objection, Your Honor.

5 THE COURT: What was the passage, Mr. Li, that
6 you were -- what were the lines? Because,
7 Ms. Polk, you made a specific request to add, I
8 believe, five or six lines.

9 MS. POLK: That's correct. Mr. Li stopped
10 with line 17. And I would like to have the jury
11 hear what occurred between line 17 and line 23.

12 MR. LI: Your Honor, that's incorrect.
13 Because I also mentioned the part about
14 Detective Diskin saying -- you know -- we'll check
15 with the medical examiner when he does his work on
16 the victims, and we'll see what he can determine.
17 That's at line 22 and 23.

18 So we actually went through from, I
19 think, pretty much line -- I don't recall exactly.
20 But I think from line 6 all the way through that
21 portion where Detective Diskin was discussing his
22 intention -- apparent intention to check with the
23 medical examiner when he does his work on the
24 victims to see what he can determine.

25 And if I can approach with the

1 transcript, Your Honor?

2 THE COURT: Ms. Polk.

3 MS. POLK: Your Honor, I disagree. And I
4 think if the jury could just hear lines 14 through
5 23. Mr. Li had suggested that the detective was
6 going to check about rat poison, when, in fact, it
7 was just his general -- in general, he would be
8 checking with the medical examiner.

9 MR. LI: Your Honor, just for the record, I
10 don't care what counsel reads. I mean, I'm happy,
11 but I just don't like the mischaracterization of
12 what I actually --

13 THE COURT: Ms. Polk, you may read the
14 passage.

15 MS. POLK: Thank you, Your Honor. And I'm not
16 trying to mischaracterize. I'm trying to let the
17 jury hear the whole passage.

18 Q. Mr. Mercer, starting on line 14, you
19 stated, well, there is rats around there. And I
20 saw some rat poison on the ground. There were some
21 chunks of rat poison. But -- you know -- that's
22 been there. I mean, there has been rats in there
23 ever since I've been here. And we've put poisons
24 there.

25 MR. LI: Your Honor, if she could ask the

1 question that prompted the response.
 2 MS. POLK: I can back up, Your Honor?
 3 THE COURT: All right.
 4 MS. POLK: To what line, Counsel?
 5 MR. LI: 12.
 6 **Q.** BY MS. POLK: I'll back up to line 12,
 7 Mr. Mercer.
 8 **A. Okay.**
 9 **Q.** And that's where Detective Diskin said,
 10 you think there could have been anything on the
 11 tarps that would cause them any problem?
 12 And your answer, well, there is rats
 13 around there, and I saw some rat poison on the --
 14 on the ground. There was some chunks of rat
 15 poison. But -- you know -- that's been there. I
 16 mean, there has been rats in there ever since I've
 17 been here, and we've put poison there.
 18 Detective Diskin asks, never had a
 19 problem?
 20 Mr. Mercer: No.
 21 And then Detective stated -- Diskin
 22 stated, all right. Sounds like you probably know
 23 more about what happened than we're going to know.
 24 And my first question is, that statement
 25 from Detective Diskin came after you had discussed

1 a number of different topics?
 2 **A. That's correct.**
 3 **Q.** And then you said, I think so. Yeah.
 4 And then Detective Diskin said, but --
 5 you know -- we'll check with the medical examiner
 6 when he does his -- his work on the victims and see
 7 what he can determine.
 8 And you say, yeah.
 9 Did I read that correctly?
 10 **A. Yes.**
 11 **Q.** Are you familiar -- or I'll just ask you.
 12 Do you know whether the Hamiltons ever sprayed a
 13 salt water or other natural solutions on their
 14 property?
 15 **A. I don't know.**
 16 **Q.** When you were asked a question about
 17 whether or not things were sprayed, in your mind
 18 what things were you referring to?
 19 **A. If things were sprayed?**
 20 **Q.** Yes.
 21 **A. I would think it would be weeds and --**
 22 **Q.** But in terms of the product being
 23 sprayed, in your mind what were those things?
 24 **A. Well, nothing. They weren't spraying**
 25 **anything, as far as I know.**

1 **Q.** Okay. With respect to that construction
 2 wood, in 2009 you assisted with two sweat lodges?
 3 **A. That's correct.**
 4 **Q.** And with respect to Mr. Ray's sweat
 5 lodge, your testimony was you heated your rocks
 6 solely with the construction wood we see in this
 7 photograph?
 8 **A. That's correct.**
 9 **Q.** Do you recall what wood you used to heat
 10 the rocks for the other ceremony that you assisted
 11 with?
 12 **A. Some of this construction wood and some**
 13 **of the natural wood.**
 14 **Q.** Do you know how much of the construction
 15 wood you used for that other ceremony in 2009 that
 16 was not Mr. Ray's?
 17 **A. Well, I remember using it because it was**
 18 **nice and flat, and it formed a nice base to put all**
 19 **the wood on. And it burned really well too. So it**
 20 **was good to use for that. And it heated things up.**
 21 **So I know that I made a nice size base to put the**
 22 **rocks on.**
 23 **Q.** And that's of this wood?
 24 **A. Of that wood. Yes. Because it's nice**
 25 **and flat. I can --**

1 MR. LI: Your Honor, just so we're clear, not
 2 that exact wood. That type of wood?
 3 **Q.** BY MS. POLK: That type of wood?
 4 **A. Yes. That type of wood.**
 5 **Q.** And we're talking about the ceremony
 6 in 2009 that was not Mr. Ray's?
 7 **A. Yes.**
 8 **Q.** And then what? You laid -- you used the
 9 construction wood for your base?
 10 **A. Uh-huh. And then I would cover it up**
 11 **with the natural wood.**
 12 **Q.** And for Mr. Ray's ceremony, what did you
 13 do that was different than the other ceremony in
 14 2009 with respect to your fire?
 15 **A. It was just all construction wood.**
 16 **Q.** After your contact with the fire in 2009
 17 for the ceremony that was not Mr. Ray's, did you
 18 ever feel sick?
 19 **A. No, I did not.**
 20 **Q.** And after your contact with the fire to
 21 heat the rocks for Mr. Ray's ceremony in 2009, did
 22 you ever feel sick?
 23 **A. I did not.**
 24 **Q.** You were asked about the crime scene and
 25 then the ceremony that took place to burn the

1 frame. And that was a couple of days later.

2 Were you there when the detectives
3 processed the crime scene?

4 **A. I don't know what "process the crime
5 scene" means.**

6 **Q.** Well, you were shown another photograph
7 that had some numbers on it?

8 **A. Yeah.**

9 **Q.** Do you recall that photograph?

10 **A. Yes.**

11 **Q.** Were you there when the crime scene tape
12 was put up?

13 **A. Yes.**

14 **Q.** And what day was that?

15 **A. That was that night of the sweat lodge --**

16 **Q.** The next day how much time did you spend
17 down at this area?

18 **A. On and off, a few hours.**

19 **Q.** Were you there the whole time that the
20 detectives from the Yavapai County Sheriff's Office
21 were there?

22 **A. Not right there in that spot. No.**

23 **Q.** And when Mr. Li asked you questions about
24 what samples were taken, were you there when
25 samples were taken?

1 **A. No. Not at all.**

2 **Q.** And do you know even what was sampled?

3 **A. I have no idea.**

4 **Q.** Do you know how much was sampled?

5 **A. No.**

6 **Q.** Did you use the wood -- this type of wood
7 depicted in the photograph that's on the
8 overhead -- the construction wood -- did you use
9 that in 2008 as well?

10 **A. Yes.**

11 **Q.** And you used it for Mr. Ray's ceremonies
12 in 2008?

13 **A. Yes.**

14 **Q.** Did you use this type of wood for
15 ceremonies in 2008 facilitated by individuals other
16 than Mr. Ray?

17 **A. Yes, we did.**

18 **Q.** And, again, for those ceremonies did
19 anybody get sick?

20 **A. No.**

21 **Q.** And did you ever feel sick after being
22 close to the fire in 2008 with that wood burning?

23 **A. No.**

24 **Q.** Do you recall in 2009 in that pump house
25 whether or not you saw granules on the ground?

1 **A. In 2009 I can't recall.**

2 **May I elaborate a little bit?**

3 **Q.** Sure.

4 **A. I would expect that it would be there
5 because nobody had gone in and cleaned that room
6 ever.**

7 **Q.** Did you ever see any saltwater used to
8 kill weeds on the property?

9 **A. No.**

10 **Q.** Did you ever observe any other natural
11 products used to address the weeds on the property?

12 **A. Just a hula hoe.**

13 **Q.** And you had testified a few moments ago
14 that when you lived on the trailer, lived in the
15 trailer down by the creek, that you left little
16 bits of food on your barbecue. What did you mean
17 by that?

18 **A. Well, when you barbecue, there's stuff
19 left over. And I'm not the cleanest person in the
20 world, so I don't really like doing dishes very
21 often. And sometimes we'd leave them sitting out
22 there.**

23 **Q.** And for those times that you left those
24 plates sitting out there with bits of food on them,
25 were the ants ever a problem?

1 **A. No, they weren't.**

2 **Q.** And how about flies?

3 **A. Well, flies are always around.**

4 **Q.** And my last question is, that large brown
5 covering that we've talked about -- when that was
6 in use, did you need to use rocks on the outside to
7 hold it down?

8 **A. Yeah. We'd put rocks on the outside.**

9 **Q.** And what was the purpose?

10 **A. Just to make sure that the bottom was
11 sealed and no air was getting in and out.**

12 **Q.** But what is the purpose in making sure
13 air is not getting in and out?

14 **A. So they could have -- the sweat lodge
15 will get hot in there. They don't want any air
16 transferring in and out.**

17 **Q.** And did you follow that same process for
18 all of the ceremonies that you assisted in
19 throughout 2009?

20 **A. Yes.**

21 **Q.** And how about for all the ceremonies you
22 assisted throughout 2008?

23 **A. Yes.**

24 **Q.** And how about 2007?

25 **A. In 2007 that's -- the first few we didn't**

1 use it, didn't do that. And then Michael came over
2 and said, why aren't you using this rubber deal?
3 And then -- then we started putting rocks
4 down because someone else suggested to put rocks
5 down.

6 Q. And once you began using that big rubber
7 deal in 2007 for ceremonies not facilitated by
8 Mr. Ray, did anybody get sick?

9 A. No.

10 Q. For Mr. Ray's what happened?

11 MR. LI: Objection. Asked and answered, Your
12 Honor.

13 THE COURT: Sustained.

14 MS. POLK: Thank you, Your Honor.

15 Thank you, Mr. Mercer.

16 THE COURT: Thank you, Counsel.

17 Mr. Li, did you want to recross with
18 regard to the photos?

19 MR. LI: Very quick.

20 MS. POLK: Your Honor, may we approach?

21 THE COURT: Yes, you may.

22 (Sidebar conference.)

23 THE COURT: Go ahead, Ms. Polk.

24 MS. POLK: As to why Mr. Li is being allowed a
25 recross.

1 THE COURT: In that one area. Remember I did
2 mention it? Only to do with the timing of the
3 photos. That was the only point, when the photos
4 were taken.

5 MS. POLK: What is the issue with the timing
6 of the photos?

7 THE COURT: Mr. Li?

8 MR. LI: Counsel elicited testimony. First of
9 all, the way it all came up was -- do I need to --

10 THE COURT: Yes.

11 MR. LI: The way it all came up was Ms. Polk
12 asked fairly vague questions about the timing of
13 the photographs. There's 50 some-odd photographs.
14 She had one photograph up there, and she said --
15 you know -- does this photograph depict what you
16 saw immediately after the sweat lodge?

17 I objected, frankly, to the form of the
18 question. There is many, many different
19 photographs. And the Court allowed the question to
20 stand but granted me brief recross about the
21 timing. That's all I want to ask about.

22 THE COURT: That's it?

23 MS. POLK: Mr. Li does not know when those
24 photographs were taken. With respect to the ones
25 taken by Debbie Mercer, she will be testifying

1 later this week. She knows when the photographs
2 were taken. I'm confused as to why Mr. Li is
3 allowed to ask questions about timing when he
4 doesn't know.

5 This witness has essentially testified
6 that he and his wife were assisting people for the
7 first 30 or so minutes, and they were not taking
8 photographs. That's what my question was about.

9 THE COURT: There has been testimony had to do
10 with suggesting recovery times and things like
11 that. There is a number of photographs taken over
12 a period of time. I think to put them in a time
13 frame, it's an important issue.

14 But, Mr. Li, it has to be right on that
15 issue.

16 MR. LI: Nothing else.

17 THE COURT: I don't know that he can answer
18 any more than what he has. I did say back two
19 hours ago, or whatever, I'd allow some brief cross
20 on that one point.

21 Thank you.

22 (End of sidebar conference.)

23 RECROSS-EXAMINATION

24 BY MR. LI:

25 Q. Mr. Mercer, again, thank you for being

1 patient. I know you're tired.

2 A. It's a long day.

3 Q. Yes, it is. I promise to be quick.

4 A. Thank you.

5 Q. Now, on cross-examination when I showed
6 you the photographs, I showed you every single
7 one -- I showed this jury every single one that I
8 had shown you; correct?

9 A. Yes.

10 Q. And from the ones where there was a lady
11 doing this?

12 A. Uh-huh.

13 Q. To the ones where the lady didn't feel so
14 well?

15 A. Yes.

16 Q. Now, you don't know, do you, sir, what
17 time any of these photographs were taken?

18 A. The only way that I would know if my wife
19 took them, they would be on our computer. But
20 right now I couldn't tell you what time.

21 Q. So you are just guessing about how long
22 after the end of the sweat lodge ceremony and any
23 particular of the 50, 60, 70 some-odd photographs I
24 showed you, when those pictures were taken in
25 relation to that?

1 MS. POLK: Your Honor, objection. I don't
 2 believe there were 70 photographs. If Mr. Li could
 3 just rephrase the question as to the photographs.
 4 MR. LI: That's fine.
 5 THE COURT: Sustained.
 6 Q. BY MR. LI: The photographs that I showed
 7 you earlier -- you have no idea when the
 8 photographs were taken in relation to the end of
 9 the sweat lodge?
 10 A. I do remember seeing my wife with a
 11 camera in her hand.
 12 Q. Okay. But you don't know the time?
 13 A. I couldn't tell you the exact time. No.
 14 Q. Okay. And you had mentioned in a number
 15 of these photographs that people had red faces?
 16 A. Yeah. That's correct.
 17 Q. And that's consistent with being
 18 flushed -- right? -- from being hot?
 19 A. Yeah.
 20 Q. Now, just one question. You had said
 21 that you had never seen somebody come out of a
 22 sweat lodge -- any other sweat lodge with a red
 23 face?
 24 A. Not like that. No. Not red.
 25 Q. You've never seen anybody with a heated

1 face coming out of a sweat lodge?
 2 A. No.
 3 Q. All right. Now, I'm going to show you
 4 Exhibit 871.
 5 And this is one of the people that you
 6 had said had a red, flushed face?
 7 A. It looks red.
 8 Q. Okay. And do you see that there is water
 9 being sprayed on this lady over here?
 10 A. Yes, I do.
 11 Q. Now, the water is very cold, is it not?
 12 A. I wouldn't say very cold. But it's cold,
 13 yeah, compared to when you're coming out of that
 14 sweat lodge.
 15 Q. It's well water; correct?
 16 A. Yeah.
 17 Q. And it's very cold when you're coming out
 18 of the sweat lodge?
 19 A. Oh, yeah.
 20 Q. And the purpose behind spraying people is
 21 to cool them off; correct?
 22 A. Yes.
 23 Q. After they come out of the sweat lodge?
 24 A. Yes.
 25 Q. Now, you would not spray somebody who had

1 already been out of the sweat lodge for an hour,
 2 would you?
 3 A. You know, they're spraying water all over
 4 the place, and it's getting everywhere. And they
 5 were spraying it for quite some time afterwards.
 6 So --
 7 Q. Okay. But if a guy is flushed -- this
 8 guy is flushed; right?
 9 A. Uh-huh.
 10 Q. And you have a lady here getting sprayed
 11 off out of the sweat lodge; right?
 12 A. Yes.
 13 Q. You don't know -- is it possible that
 14 when you said that these photographs were taken 30,
 15 45 minutes after the end of the sweat lodge, you're
 16 just wrong?
 17 A. Well, I couldn't be that wrong, because
 18 we didn't hang around the sweat lodge that much
 19 longer afterwards.
 20 Q. Okay. Did you wear a watch?
 21 A. No, I didn't.
 22 Q. Okay. And did you have a stopwatch
 23 somewhere where you were keeping track of time?
 24 A. No, I didn't.
 25 Q. Okay. And so you don't actually know how

1 many minutes --
 2 A. I couldn't tell you the exact number of
 3 minutes. No.
 4 Q. Okay. And what we do see, though, sir,
 5 is we see a lot of people who are flushed -- who
 6 Ms. Polk showed you in these various photographs
 7 who have flushed, red faces?
 8 A. Yes. That's correct.
 9 Q. You know, Exhibit 849?
 10 A. Yes.
 11 Q. Exhibit 873?
 12 A. Yes.
 13 Q. Exhibit 877?
 14 A. Yes.
 15 Q. And you also have pictures of people
 16 getting sprayed down or spraying in this series,
 17 872?
 18 A. Yes. Yeah. After a while the hose
 19 turned into a game.
 20 Q. Okay. It's fair to say that the purpose
 21 behind the hose is to cool people off?
 22 A. That's correct.
 23 Q. And fair to say that when you cool people
 24 off, usually it's when they're walking out of the
 25 sweat lodge?

1 **A. No. Because the people they were**
 2 **spraying were usually away from the sweat lodge a**
 3 **bit. They didn't spray them as they were coming**
 4 **right out.**
 5 **Q.** Okay. But fairly shortly after they come
 6 out of the sweat lodge; correct?
 7 **A. Yeah.**
 8 **Q.** Meaning a matter of seconds, minutes;
 9 correct?
 10 **A. Yes.**
 11 **Q.** Like this lady here?
 12 **A. Well, who knows how long that's been**
 13 **done? You know, how long the sweat lodge was over**
 14 **by that time.**
 15 **Q.** Exactly. You're guessing, aren't you?
 16 **A. Yes.**
 17 **Q.** Thank you.
 18 THE COURT: Ladies and gentlemen, are there
 19 any other questions for this witness?
 20 Ms. Rybar?
 21 THE BAILIFF: No.
 22 THE COURT: May Mr. Mercer be excused,
 23 Ms. Polk?
 24 MS. POLK: Your Honor, the state would like to
 25 have him remain.

1 THE COURT: Mr. Mercer, you're going to be
 2 temporarily excused. You may be called back.
 3 That's what that means. So remember that rule of
 4 exclusion of witnesses.
 5 And because you're not excused, there is
 6 another part of the rule that applies also. Often
 7 when a person is excused as a witness, that person
 8 can actually remain in the courtroom after that.
 9 You cannot. You have to stay out of the courtroom.
 10 That's where the rule of exclusion actually comes
 11 from. And all those other things apply. And it's
 12 very important in your case because of your close
 13 relationship to another witness and the fact you
 14 know other witnesses.
 15 You just cannot discuss the case or your
 16 testimony, anything that relates to the case, with
 17 people involved in the case. You cannot discuss
 18 any of that with any other witness.
 19 Again, it's a good idea not to talk to
 20 anybody about the case until it's completely over,
 21 the trial is over. However, you can talk to the
 22 lawyers if no other witness is present.
 23 Any questions about that at all?
 24 THE WITNESS: No. I understand.
 25 THE COURT: Then if you'll wait here just a

1 minute, I'm going to go ahead and excuse the jury
 2 for the evening recess.
 3 Ladies and gentlemen, please remember all
 4 aspects of the admonition.
 5 You are excused. Please be reassembled
 6 at 9:15 tomorrow. And I'm going to ask the parties
 7 to remain a moment. Thank you.
 8 (Proceedings continued outside presence
 9 of jury.)
 10 Please be seated, Counsel.
 11 The record will show the presence of
 12 Mr. Ray and the attorneys. The witness has now
 13 left the courtroom. The jury is not present.
 14 I just wanted to get an idea about
 15 tomorrow and if there are legal issues anticipated.
 16 MR. KELLY: Judge, I have one legal issue.
 17 Pursuant to Rule 105, we would request a limiting
 18 instruction regarding admissibility of the
 19 prior-act evidence before the next witness.
 20 Also, Judge, just for your information,
 21 we did file a motion for reconsideration of your
 22 ruling yesterday. And that was filed a short time
 23 ago, about an hour and a half ago. I think the
 24 only -- my understanding is the next witness is
 25 Debra Mercer. And 105 indicates upon request. And

1 we're now making that request.
 2 THE COURT: Okay. Do you have the proposed
 3 instruction drafted? Because I'd like to get it to
 4 the state as soon as possible.
 5 MR. KELLY: We can have that by tomorrow,
 6 Judge.
 7 THE COURT: Okay. Then the earlier, the
 8 better obviously.
 9 MR. KELLY: Right.
 10 THE COURT: Here's the other thing. There are
 11 a number of matters out there. There is some
 12 memorandum -- a memoranda, and then there are some
 13 motions. And I really want to have those
 14 addressed. And I don't know the ones that are not
 15 responded to yet. If there is any intention to do
 16 that. But I want to have that and get those
 17 matters resolved.
 18 Ms. Polk.
 19 MS. POLK: Your Honor, the state does intend
 20 to respond to any motions that are out there. We
 21 have responded to some. I'm not sure what the
 22 Court is referring to. But for those that we have
 23 not responded to yet, if our time is still running,
 24 we intend to respond.
 25 THE COURT: There is one group of motions, and

1 it has to do with late disclosure, not -- just by
2 terminology. And I don't think there have been
3 responses to those.

4 Mr. Kelly.

5 MR. KELLY: We haven't seen a response. I
6 believe you're correct, Judge. In addition, we
7 filed a motion regarding prosecutorial misconduct
8 requesting some direction from the Court --
9 instruction from the Court precluding some
10 particular types of behaviors.

11 THE COURT: I read that memorandum. And I
12 don't know that -- it didn't request relief. I saw
13 that, Mr. Kelly.

14 MR. KELLY: So, again, that was just filed
15 yesterday. I realize the response time has not
16 run. And at some point in time I believe we'd be
17 requesting time to discuss that. And I would
18 simply state that some of the concerns outlined in
19 that motion continue to be concerns throughout the
20 course of trial. So I suppose the sooner it's
21 addressed, the better. But there has to be a
22 response time.

23 THE COURT: Ms. Polk, did you want to file
24 anything in writing on that?

25 MS. POLK: We do intend to, Your Honor.

1 THE COURT: Okay. All right.

2 Then I'm going to ask that you be present
3 by 9:00 o'clock tomorrow in case there is something
4 we can put on the record. But specifically I want
5 the state to see the proposed limiting instruction
6 that has to do with causation.

7 MR. LI: Debbie Mercer is next; is that
8 correct?

9 MS. POLK: Your Honor, the state would just
10 request it be emailed to us by 8:00 o'clock tonight
11 so we can take a look at it.

12 THE COURT: That would be good if it can get
13 there this evening.

14 MR. KELLY: We'll try, Your Honor. We're
15 working on it right now, or Miriam is.

16 THE COURT: All right. Then we'll be in
17 recess.

18 Thank you.

19 (The proceedings concluded.)
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1 STATE OF ARIZONA)
2 COUNTY OF YAVAPAI) ss. REPORTER'S CERTIFICATE

3

4 I, Mina G. Hunt, do hereby certify that I
5 am a Certified Reporter within the State of Arizona
6 and Certified Shorthand Reporter in California.

7 I further certify that these proceedings
8 were taken in shorthand by me at the time and place
9 herein set forth, and were thereafter reduced to
10 typewritten form, and that the foregoing
11 constitutes a true and correct transcript.

12 I further certify that I am not related
13 to, employed by, nor of counsel for any of the
14 parties or attorneys herein, nor otherwise
15 interested in the result of the within action.

16 In witness whereof, I have affixed my
17 signature this 20th day of April, 2011
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24 MINA G HUNT, AZ CR No. 50619
25 CA CSR No 8335

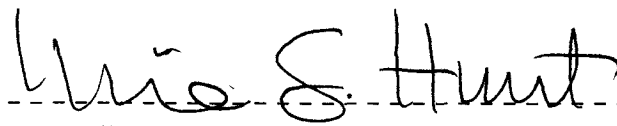
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